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Legislative History – Montana Session Law

Chapter: 422 Session L: 1999
Bill Number: HB 95

Checklist of Bill History

History and Final Status Sheet	☒
Introduced Bill	☒
Fiscal Note	☐
Third Reading Bill	☒
Final Version of Bill	☒

House

Committee: Natural Resources

Hearing Date(s): 01/08/1999

Committee Report: Bill passed as amended

Senate

Committee: Natural Resources

Hearing Date(s): 03/03/1999

Committee Report: Bill concurred as amended

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: Charlotty Herman

Date: 05/12/2026

Notes: No conference committee; no fiscal note

Chapter No.	Bill No.
Ch. 323	SB 409
Ch. 324	SB 446
Ch. 325	SB 453
Ch. 326	SB 481
Ch. 327	SB 522
Ch. 328	HB 4
Ch. 329	HB 9
Ch. 330	HB 32
Ch. 331	HB 47
Ch. 332	HB 64
Ch. 333	HB 107
Ch. 334	HB 111
Ch. 335	HB 126
Ch. 336	HB 153
Ch. 337	HB 192
Ch. 338	HB 339
Ch. 339	HB 625
Ch. 340	HB 630
Ch. 341	HB 676
Ch. 342	SB 27
Ch. 343	SB 69
Ch. 344	SB 137
Ch. 345	SB 183
Ch. 346	SB 190
Ch. 347	SB 216
Ch. 348	SB 219
Ch. 349	SB 232
Ch. 350	SB 236
Ch. 351	SB 269
Ch. 352	SB 292
Ch. 353	SB 294
Ch. 354	SB 326
Ch. 355	SB 423
Ch. 356	SB 470
Ch. 357	SB 476
Ch. 358	HB 59
Ch. 359	HB 71
Ch. 360	HB 72
Ch. 361	HB 98
Ch. 362	HB 130
Ch. 363	HB 150
Ch. 364	HB 155
Ch. 365	HB 188
Ch. 366	HB 215
Ch. 367	HB 301
Ch. 368	HB 304
Ch. 369	HB 379
Ch. 370	HB 396
Ch. 371	HB 399
Ch. 372	HB 404
Ch. 373	HB 435
Ch. 374	HB 502
Ch. 375	HB 580
Ch. 376	HB 644
Ch. 377	SB 117
Ch. 378	SB 126
Ch. 379	SB 151
Ch. 380	SB 178
Ch. 381	SB 215
Ch. 382	SB 241
Ch. 383	SB 293
Ch. 384	SB 331
Ch. 385	SB 477
Ch. 386	SB 505
Ch. 387	HB 53
Ch. 388	HB 54
Ch. 389	HB 69
Ch. 390	HB 81
Ch. 391	HB 116
Ch. 392	HB 135
Ch. 393	HB 204
Ch. 394	HB 207
Ch. 395	HB 209
Ch. 396	HB 232
Ch. 397	HB 255
Ch. 398	HB 257
Ch. 399	HB 282
Ch. 400	HB 395
Ch. 401	HB 444
Ch. 402	HB 461
Ch. 403	HB 504
Ch. 404	HB 526
Ch. 405	HB 578
Ch. 406	SB 36
Ch. 407	SB 68
Ch. 408	SB 79
Ch. 409	SB 113
Ch. 410	SB 169
Ch. 411	SB 233
Ch. 412	SB 359
Ch. 413	SB 463
Ch. 414	SB 486
Ch. 415	SB 504
Ch. 416	SB 82
Ch. 417	SB 89
Ch. 418	HB 6
Ch. 419	HB 7
Ch. 420	HB 58
Ch. 421	HB 74
Ch. 422	HB 95
Ch. 423	HB 99
Ch. 424	HB 109
Ch. 425	HB 113
Ch. 426	HB 128
Ch. 427	HB 132
Ch. 428	HB 180
Ch. 429	HB 186
Ch. 430	HB 187
Ch. 431	HB 189
Ch. 432	HB 203
Ch. 433	HB 221
Ch. 434	HB 266
Ch. 435	HB 275
Ch. 436	HB 405

HOUSE BILL NO. 95

INTRODUCED BY STORY B

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA WATER USE LAWS; CLARIFYING THAT TO APPROPRIATE WATER INCLUDES HOLDING A FEDERAL NON-INDIAN OR INDIAN RESERVED WATER RIGHT CREATED UNDER FEDERAL LAW; CLARIFYING PROCEDURES FOR CORRECT AND COMPLETE PERMIT APPLICATIONS; CLARIFYING WHAT CONSTITUTES A VALID OBJECTION; CHANGING PROCEDURAL ASPECTS OF CERTAIN HEARINGS AND MAILINGS; ALTERING PROCEDURES FOR REQUESTING AN EXTENSION TO COMPLETE THE REQUIREMENTS FOR A WATER RIGHT PERMIT; AMENDING SECTIONS 85-2-102, 85-2-302, 85-2-308, 85-2-309, 85-2-310, AND 85-2-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-102, MCA, is amended to read:

"85-2-102. (Temporary) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means to:

(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, reserve water in accordance with 85-2-316;

(c) in the case of the department of fish, wildlife, and parks, lease water in accordance with 85-2-436;

(d) in the case of a federal agency or Indian tribe, hold a federal non-Indian or Indian reserved water right created under federal law; or

~~(d)~~(e) in the Upper Clark Fork River basin, maintain and enhance streamflows to benefit the fishery resource in accordance with 85-2-439.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436; or

(d) a use of water to maintain and enhance streamflows to benefit the fishery resource in the Upper Clark Fork River basin as part of the Upper Clark Fork River basin instream flow pilot program authorized under 85-2-439.

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(10) "Ground water" means any water that is beneath the ground surface.

(11) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(12) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(13) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(14) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does

not mean a private corporation, association, or group.

(15) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(16) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(17) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(18) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(19) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(20) "Water division" means a drainage basin as defined in 3-7-102.

(21) "Water judge" means a judge as provided for in Title 3, chapter 7.

(22) "Water master" means a master as provided for in Title 3, chapter 7.

(23) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(24) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.
(Terminates June 30, 1999--sec. 4, Ch. 740, L. 1991.)

85-2-102. (Effective July 1, 1999) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means to:

(a) ~~to~~ divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, ~~to~~ reserve water in accordance with 85-2-316;

(c) in the case of a federal agency or Indian tribe, hold a federal non-Indian or Indian reserved water right created under federal law; or

~~(c)~~(d) in the Upper Clark Fork River basin, ~~to~~ maintain and enhance streamflows to benefit the fishery resource in accordance with 85-2-439.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; or

(c) a use of water to maintain and enhance streamflows to benefit the fishery resource in the Upper Clark Fork River basin as part of the Upper Clark Fork River basin instream flow pilot program authorized under 85-2-439.

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(8) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(9) "Ground water" means any water that is beneath the ground surface.

(10) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(11) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(12) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

(13) "Political subdivision" means any county, incorporated city or town, public corporation, or district

created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.

(14) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(15) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(16) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(17) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

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(19) "Water division" means a drainage basin as defined in 3-7-102.

(20) "Water judge" means a judge as provided for in Title 3, chapter 7.

(21) "Water master" means a master as provided for in Title 3, chapter 7.

(22) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(23) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn. (Terminates June 30, 2005--sec. 14, Ch. 487, L. 1995.)

85-2-102. (Effective July 1, 2005) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means to:

(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, ~~to~~ reserve water in accordance with 85-2-316;

(c) in the case of a federal agency or Indian tribe, hold a federal non-Indian or Indian reserved water right created under federal law; or

~~(c)~~(d) in the case of the department of fish, wildlife, and parks, ~~to~~ lease water in accordance with

85-2-436.

(2) "Beneficial use", unless otherwise provided, means:

(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;

(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; and

(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.

(3) "Certificate" means a certificate of water right issued by the department.

(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.

(5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.

(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.

(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.

(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.

(9) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.

(10) "Ground water" means any water that is beneath the ground surface.

(11) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.

(12) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.

(13) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.

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(16) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(17) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(18) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(19) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(20) "Water division" means a drainage basin as defined in 3-7-102.

(21) "Water judge" means a judge as provided for in Title 3, chapter 7.

(22) "Water master" means a master as provided for in Title 3, chapter 7.

(23) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(24) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."

Section 2. Section 85-2-302, MCA, is amended to read:

"85-2-302. Application for permit. Except as otherwise provided in ~~(1) through (3) of~~ 85-2-306(1) through (3), a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works ~~therefor~~ except by applying for and receiving a permit from the department. The application ~~shall~~ must be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerk and recorders. The applicant shall submit a correct and complete application. ~~The department shall return a defective application for correction or~~

~~completion, together with the reasons for returning it. An application does not lose priority of filing because of defects if the application is corrected, completed, and refiled with the department within 30 days after its return to the applicant or within a further time as the department may allow. If an application is not corrected and completed within 30 days or within a further time as the department allows, up to 3 months, the priority date of the application shall be the date of refiling the application with the corrections with the department. An application not corrected within 3 months shall be terminated.~~ The department shall notify the applicant of any defects in an application. An application does not lose priority of filing because of defects if the application is corrected or completed within 30 days of the date of notification of the defects or within a further time as the department may allow, but not to exceed 90 days from the date of notification. If an application is made correct and complete after the mandated time period, but within 90 days of the date of notification of the defects, the priority date of the application is the date the application is made correct and complete. An application not corrected or completed within 90 days from the date of notification of the defects is terminated."

Section 3. Section 85-2-308, MCA, is amended to read:

"85-2-308. Objections. (1) (a) An objection to an application for a permit must be filed by the date specified by the department under 85-2-307(2).

(b) The objection to an application for a permit must state the name and address of the objector and facts ~~tending to show~~ indicating that one or more of the criteria in 85-2-311 are not met.

(2) For an application for a change in appropriation rights, the objection must state the name and address of the objector and facts ~~tending to show~~ indicating that one or more of the criteria in 85-2-402 are not met.

(3) A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation.

(4) For an application for a reservation of water, the objection must state the name and address of the objector and facts ~~tending to show~~ indicating that one or more of the criteria in 85-2-316 are not met.

(5) An objector to an application under this chapter shall ~~timely~~ file a correct and complete objection on a form prescribed by the department within the time period stated on the public notice associated with the application.

(6) An objection is valid if the objector has standing pursuant to subsection (3), has filed a correct and complete objection within the prescribed time period, and has stated the applicable information required under

subsection (1), (2), or (4)."

Section 4. Section 85-2-309, MCA, is amended to read:

"85-2-309. Hearings on objections -- jurisdiction. (1) If the department determines that an objection to an application for a permit or change approval under 85-2-402 states a valid objection, it shall hold a ~~public~~ contested case hearing, pursuant to Title 2, chapter 4, part 6, on the objection within 60 days from the date set by the department for the filing of objections, after serving notice of the hearing by ~~certified~~ first-class mail upon the applicant and the objector, unless the department certifies an issue to the district court for determination by a water judge under subsection (2). The department may consolidate hearings if more than one objection is filed to an application. The department shall file in its records proof of the service by affidavit of the department.

(2) (a) At any time prior to commencement or before the conclusion of a hearing as provided in subsection (1), the department may in its discretion certify to the district court all factual and legal issues involving the adjudication or determination of the water rights at issue in the hearing, including but not limited to issues of abandonment, quantification, or relative priority dates. Certified controversies must be given priority by a water judge over all other adjudication matters.

(b) If the department fails to certify an issue as provided in this section after a timely request by a party to the hearing, the department shall include its denial to certify as part of the record of the hearing.

(c) Upon determination of the issues certified to it by the department, the court shall remand the matter to the department for further processing of the application under this chapter.

(3) Subsection (2) does not apply in the case of a matter considered at a hearing under this section pursuant to 85-2-316 or 85-2-322."

Section 5. Section 85-2-310, MCA, is amended to read:

"85-2-310. Action on application. (1) The department shall grant, deny, or condition an application for a permit in whole or in part within 120 days after the last date of publication of the notice of application if no objections have been received and within 180 days if a hearing is held or objections have been received. However, in either case the time may be extended upon agreement of the applicant, or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, not more than 60 days upon order of the department. If the department orders the time extended, it shall serve a notice of the extension and the reasons ~~therefor~~ for the extension by ~~certified~~ first-class mail upon the applicant and each person who

has filed an objection as provided by 85-2-308.

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department or denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions, or limitations specified by it or that the application should be denied, the department shall prepare a statement of its opinion and ~~the~~ its reasons ~~therefor~~ for the opinion. The department shall serve a statement of its opinion by ~~certified~~ first-class mail upon the applicant, ~~together~~ with a notice that the applicant may obtain a hearing by filing a request ~~therefor~~ within 30 days after the notice is mailed. The notice ~~shall~~ must further state that the application will be modified in a specified manner or denied, unless a hearing is requested.

(3) The department may cease action upon an application for a permit and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for ~~any~~ either of these reasons ~~shall~~ must be accompanied by a statement of the reasons for which it was returned, and there ~~shall be no~~ is not a right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection ~~shall be deemed~~ is a final decision of the department.

(4) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

(a) an application is not corrected and completed as required by 85-2-302;

(b) the appropriate filing fee is not paid;

(c) the application does not document:

(i) a beneficial use of water;

(ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet ~~per~~ a second or more, a detailed project plan describing when and how much water will be put to a beneficial use. The project plan must include a reasonable time line for the completion of the project and the actual application of the water to a beneficial use.

(iv) for appropriations not covered in subsection (4)(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and

(v) if the water applied for is to be appropriated above that which will be used solely by the applicant or

if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement fee, if any, is not paid as required by 85-2-124."

Section 6. Section 85-2-312, MCA, is amended to read:

"85-2-312. Terms of permit. (1) The department may issue a permit for less than the amount of water requested, but ~~in no case~~ may ~~it~~ not issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. The department may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria listed in 85-2-311, and it may issue temporary or seasonal permits. A permit ~~shall~~ must be issued subject to existing rights and any final determination of those rights made under this chapter.

(2) The department shall specify in the permit or in any authorized extension of time provided in subsection (3), the time limits for commencement of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use. In fixing those time limits, the department shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. The department shall issue the permit or authorized extension of time subject to the terms, conditions, restrictions, and limitations it considers necessary to ensure that the work on the appropriation is commenced, conducted, and completed and that the water is actually applied in a timely manner to the beneficial use specified in the permit.

(3) The department shall by rule or by condition to a permit establish a process allowing for the extension of the time limits specified in the permit for commencement of the appropriation works, completion of construction, and actual application of water to the proposed beneficial use. ~~The department may not accept a request for extension of time that is filed less than 30 days prior to the time limit specified in the permit.~~ If a permit is not completed within the time limit specified or within an extension of that time limit, the permit is void upon lapse of

the time limit.

(4) The original of the permit ~~shall~~ must be sent to the permittee, and a copy ~~shall~~ must be kept in the office of the department in Helena."

NEW SECTION. **Section 7. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 8. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

NEW SECTION. **Section 9. Effective date.** [This act] is effective on passage and approval.

- END -

HOUSE BILL NO. 95

INTRODUCED BY B. STORY

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA WATER USE LAWS; ~~CLARIFYING THAT TO APPROPRIATE WATER INCLUDES HOLDING A FEDERAL NON-INDIAN OR INDIAN RESERVED WATER RIGHT CREATED UNDER FEDERAL LAW;~~ CLARIFYING PROCEDURES FOR CORRECT AND COMPLETE PERMIT APPLICATIONS; CLARIFYING WHAT CONSTITUTES A VALID OBJECTION; CHANGING PROCEDURAL ASPECTS OF CERTAIN HEARINGS AND MAILINGS; ALTERING PROCEDURES FOR REQUESTING AN EXTENSION TO COMPLETE THE REQUIREMENTS FOR A WATER RIGHT PERMIT; AMENDING SECTIONS ~~85-2-102,~~ 85-2-302, 85-2-308, 85-2-309, 85-2-310, AND 85-2-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~**Section 1.** Section 85-2-102, MCA, is amended to read:~~

~~**"85-2-102. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:~~

~~(1) "Appropriate" means to:~~

~~(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;~~

~~(b) in the case of a public agency, reserve water in accordance with 85-2-316;~~

~~(c) in the case of the department of fish, wildlife, and parks, lease water in accordance with 85-2-436;~~

~~(d) in the case of a federal agency or Indian tribe, hold a federal non-Indian or Indian reserved water right created under federal law; or~~

~~(d)~~(e) ~~in the Upper Clark Fork River basin, maintain and enhance streamflows to benefit the fishery resource in accordance with 85-2-439.~~

~~(2) "Beneficial use", unless otherwise provided, means:~~

~~(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;~~

~~(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;~~

~~(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436; or~~

~~(d) a use of water to maintain and enhance streamflows to benefit the fishery resource in the Upper Clark Fork River basin as part of the Upper Clark Fork River basin instream flow pilot program authorized under 85-2-439.~~

~~(3) "Certificate" means a certificate of water right issued by the department.~~

~~(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.~~

~~(5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.~~

~~(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.~~

~~(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.~~

~~(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.~~

~~(9) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.~~

~~(10) "Ground water" means any water that is beneath the ground surface.~~

~~(11) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.~~

~~(12) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.~~

~~(13) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.~~

~~(14) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does~~

not mean a private corporation, association, or group.

(15) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.

(16) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.

(17) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.

(18) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(19) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.

(20) "Water division" means a drainage basin as defined in 3-7-102.

(21) "Water judge" means a judge as provided for in Title 3, chapter 7.

(22) "Water master" means a master as provided for in Title 3, chapter 7.

(23) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.

(24) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(Terminates June 30, 1999--sec. 4, Ch. 740, L. 1991.)

85-2-102. (Effective July 1, 1999) Definitions. Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Appropriate" means to:

(a) to divert, impound, or withdraw (including by stock for stock water) a quantity of water;

(b) in the case of a public agency, to reserve water in accordance with 85-2-316;

(c) in the case of a federal agency or Indian tribe, hold a federal non-Indian or Indian reserved water right created under federal law; or

(c)(d) in the Upper Clark Fork River basin, to maintain and enhance streamflows to benefit the fishery resource in accordance with 85-2-439.

~~(2) "Beneficial use", unless otherwise provided, means:~~

~~(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;~~

~~(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; or~~

~~(c) a use of water to maintain and enhance streamflows to benefit the fishery resource in the Upper Clark Fork River basin as part of the Upper Clark Fork River basin instream flow pilot program authorized under 85-2-439.~~

~~(3) "Certificate" means a certificate of water right issued by the department.~~

~~(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.~~

~~(5) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.~~

~~(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.~~

~~(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.~~

~~(8) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.~~

~~(9) "Ground water" means any water that is beneath the ground surface.~~

~~(10) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.~~

~~(11) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.~~

~~(12) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.~~

~~(13) "Political subdivision" means any county, incorporated city or town, public corporation, or district~~

~~created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.~~

~~(14) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.~~

~~(15) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.~~

~~(16) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.~~

~~(17) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.~~

~~(18) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.~~

~~(19) "Water division" means a drainage basin as defined in 3-7-102.~~

~~(20) "Water judge" means a judge as provided for in Title 3, chapter 7.~~

~~(21) "Water master" means a master as provided for in Title 3, chapter 7.~~

~~(22) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.~~

~~(23) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.~~ ~~(Terminates June 30, 2005--sec. 14, Ch. 487, L. 1995.)~~

~~**85-2-102. (Effective July 1, 2005) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:~~

~~(1) "Appropriate" means to:~~

~~(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;~~

~~(b) in the case of a public agency, to reserve water in accordance with 85-2-316;~~

~~(c) in the case of a federal agency or Indian tribe, hold a federal non-Indian or Indian reserved water right created under federal law;~~ or

~~(c)~~(d) ~~in the case of the department of fish, wildlife, and parks, to lease water in accordance with~~

~~85-2-436.~~

~~(2) "Beneficial use", unless otherwise provided, means:~~

~~(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;~~

~~(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; and~~

~~(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.~~

~~(3) "Certificate" means a certificate of water right issued by the department.~~

~~(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.~~

~~(5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.~~

~~(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.~~

~~(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.~~

~~(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.~~

~~(9) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.~~

~~(10) "Ground water" means any water that is beneath the ground surface.~~

~~(11) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.~~

~~(12) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.~~

~~(13) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.~~

~~(14) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.~~

~~(15) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.~~

~~(16) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.~~

~~(17) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.~~

~~(18) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.~~

~~(19) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.~~

~~(20) "Water division" means a drainage basin as defined in 3-7-102.~~

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~~(23) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.~~

~~(24) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."~~

Section 1. Section 85-2-302, MCA, is amended to read:

"85-2-302. Application for permit. Except as otherwise provided in ~~(1) through (3) of~~ 85-2-306(1) through (3), a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works ~~therefor~~ except by applying for and receiving a permit from the department. The application ~~shall~~ must be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerk and recorders. The applicant shall submit a correct and complete application. ~~The department shall return a defective application for correction or~~

~~completion, together with the reasons for returning it. An application does not lose priority of filing because of defects if the application is corrected, completed, and refiled with the department within 30 days after its return to the applicant or within a further time as the department may allow. If an application is not corrected and completed within 30 days or within a further time as the department allows, up to 3 months, the priority date of the application shall be the date of refiling the application with the corrections with the department. An application not corrected within 3 months shall be terminated.~~ The department shall notify the applicant of any defects in an application. An application does not lose priority of filing because of defects if the application is corrected or completed within 30 days of the date of notification of the defects or within a further time as the department may allow, but not to exceed 90 days from the date of notification. If an application is made correct and complete after the mandated time period, but within 90 days of the date of notification of the defects, the priority date of the application is the date the application is made correct and complete. An application not corrected or completed within 90 days from the date of notification of the defects is terminated."

Section 2. Section 85-2-308, MCA, is amended to read:

"85-2-308. Objections. (1) (a) An objection to an application for a permit must be filed by the date specified by the department under 85-2-307(2).

(b) The objection to an application for a permit must state the name and address of the objector and facts ~~tending to show~~ indicating that one or more of the criteria in 85-2-311 are not met.

(2) For an application for a change in appropriation rights, the objection must state the name and address of the objector and facts ~~tending to show~~ indicating that one or more of the criteria in 85-2-402 are not met.

(3) A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation.

(4) For an application for a reservation of water, the objection must state the name and address of the objector and facts ~~tending to show~~ indicating that one or more of the criteria in 85-2-316 are not met.

(5) An objector to an application under this chapter shall ~~timely~~ file a correct and complete objection on a form prescribed by the department within the time period stated on the public notice associated with the application.

(6) An objection is valid if the objector has standing pursuant to subsection (3), has filed a correct and complete objection within the prescribed time period, and has stated the applicable information required under

subsection (1), (2), or (4)."

Section 3. Section 85-2-309, MCA, is amended to read:

"85-2-309. Hearings on objections -- jurisdiction. (1) If the department determines that an objection to an application for a permit or change approval under 85-2-402 states a valid objection, it shall hold a ~~public~~ contested case hearing, pursuant to Title 2, chapter 4, part 6, on the objection within 60 days from the date set by the department for the filing of objections, after serving notice of the hearing by ~~certified~~ first-class mail upon the applicant and the objector, unless the department certifies an issue to the district court for determination by a water judge under subsection (2). The department may consolidate hearings if more than one objection is filed to an application. The department shall file in its records proof of the service by affidavit of the department.

(2) (a) At any time prior to commencement or before the conclusion of a hearing as provided in subsection (1), the department may in its discretion certify to the district court all factual and legal issues involving the adjudication or determination of the water rights at issue in the hearing, including but not limited to issues of abandonment, quantification, or relative priority dates. Certified controversies must be given priority by a water judge over all other adjudication matters.

(b) If the department fails to certify an issue as provided in this section after a timely request by a party to the hearing, the department shall include its denial to certify as part of the record of the hearing.

(c) Upon determination of the issues certified to it by the department, the court shall remand the matter to the department for further processing of the application under this chapter.

(3) Subsection (2) does not apply in the case of a matter considered at a hearing under this section pursuant to 85-2-316 or 85-2-322."

Section 4. Section 85-2-310, MCA, is amended to read:

"85-2-310. Action on application. (1) The department shall grant, deny, or condition an application for a permit in whole or in part within 120 days after the last date of publication of the notice of application if no objections have been received and within 180 days if a hearing is held or objections have been received. However, in either case the time may be extended upon agreement of the applicant, or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, not more than 60 days upon order of the department. If the department orders the time extended, it shall serve a notice of the extension and the reasons ~~therefor~~ for the extension by ~~certified~~ first-class mail upon the applicant and each person who

has filed an objection as provided by 85-2-308.

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department or denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions, or limitations specified by it or that the application should be denied, the department shall prepare a statement of its opinion and ~~the~~ its reasons ~~therefor~~ for the opinion. The department shall serve a statement of its opinion by ~~certified~~ first-class mail upon the applicant, ~~together~~ with a notice that the applicant may obtain a hearing by filing a request ~~therefor~~ within 30 days after the notice is mailed. The notice ~~shall~~ must further state that the application will be modified in a specified manner or denied, unless a hearing is requested.

(3) The department may cease action upon an application for a permit and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for ~~any~~ either of these reasons ~~shall~~ must be accompanied by a statement of the reasons for which it was returned, and there ~~shall be no~~ is not a right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection ~~shall be deemed~~ is a final decision of the department.

(4) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

(a) an application is not corrected and completed as required by 85-2-302;

(b) the appropriate filing fee is not paid;

(c) the application does not document:

(i) a beneficial use of water;

(ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet ~~per~~ a second or more, a detailed project plan describing when and how much water will be put to a beneficial use. The project plan must include a reasonable time line for the completion of the project and the actual application of the water to a beneficial use.

(iv) for appropriations not covered in subsection (4)(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and

(v) if the water applied for is to be appropriated above that which will be used solely by the applicant or

if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement fee, if any, is not paid as required by 85-2-124."

Section 5. Section 85-2-312, MCA, is amended to read:

"85-2-312. Terms of permit. (1) The department may issue a permit for less than the amount of water requested, but ~~in no case~~ may ~~it~~ not issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. The department may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria listed in 85-2-311, and it may issue temporary or seasonal permits. A permit ~~shall~~ must be issued subject to existing rights and any final determination of those rights made under this chapter.

(2) The department shall specify in the permit or in any authorized extension of time provided in subsection (3), the time limits for commencement of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use. In fixing those time limits, the department shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. The department shall issue the permit or authorized extension of time subject to the terms, conditions, restrictions, and limitations it considers necessary to ensure that the work on the appropriation is commenced, conducted, and completed and that the water is actually applied in a timely manner to the beneficial use specified in the permit.

(3) The department shall by rule or by condition to a permit establish a process allowing for the extension of the time limits specified in the permit for commencement of the appropriation works, completion of construction, and actual application of water to the proposed beneficial use. ~~The department may not accept a request for extension of time that is filed less than 30 days prior to the time limit specified in the permit.~~ If a permit is not completed within the time limit specified or within an extension of that time limit, the permit is void upon lapse of

the time limit.

(4) The original of the permit ~~shall~~ must be sent to the permittee, and a copy ~~shall~~ must be kept in the office of the department in Helena."

NEW SECTION. **Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 7. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

- END -

HOUSE BILL NO. 95

INTRODUCED BY B. STORY

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA WATER USE LAWS; ~~CLARIFYING THAT TO APPROPRIATE WATER INCLUDES HOLDING A FEDERAL NON-INDIAN OR INDIAN RESERVED WATER RIGHT CREATED UNDER FEDERAL LAW;~~ CLARIFYING PROCEDURES FOR CORRECT AND COMPLETE PERMIT APPLICATIONS; CLARIFYING WHAT CONSTITUTES A VALID OBJECTION; CHANGING PROCEDURAL ASPECTS OF CERTAIN HEARINGS AND MAILINGS; ALTERING PROCEDURES FOR REQUESTING AN EXTENSION TO COMPLETE THE REQUIREMENTS FOR A WATER RIGHT PERMIT; AMENDING SECTIONS ~~85-2-102,~~ 85-2-302, 85-2-308, 85-2-309, 85-2-310, AND 85-2-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

~~**Section 1.** Section 85-2-102, MCA, is amended to read:~~

~~**"85-2-102. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:~~

~~(1) "Appropriate" means to:~~

~~(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;~~

~~(b) in the case of a public agency, reserve water in accordance with 85-2-316;~~

~~(c) in the case of the department of fish, wildlife, and parks, lease water in accordance with 85-2-436;~~

~~(d) in the case of a federal agency or Indian tribe, hold a federal non-Indian or Indian reserved water right created under federal law; or~~

~~(d)~~(e) ~~in the Upper Clark Fork River basin, maintain and enhance streamflows to benefit the fishery resource in accordance with 85-2-439.~~

~~(2) "Beneficial use", unless otherwise provided, means:~~

~~(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;~~

~~(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141;~~

~~(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436; or~~

~~(d) a use of water to maintain and enhance streamflows to benefit the fishery resource in the Upper Clark Fork River basin as part of the Upper Clark Fork River basin instream flow pilot program authorized under 85-2-439.~~

~~(3) "Certificate" means a certificate of water right issued by the department.~~

~~(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.~~

~~(5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.~~

~~(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.~~

~~(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.~~

~~(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.~~

~~(9) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.~~

~~(10) "Ground water" means any water that is beneath the ground surface.~~

~~(11) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.~~

~~(12) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.~~

~~(13) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.~~

~~(14) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does~~

~~not mean a private corporation, association, or group.~~

~~(15) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.~~

~~(16) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.~~

~~(17) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.~~

~~(18) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.~~

~~(19) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.~~

~~(20) "Water division" means a drainage basin as defined in 3-7-102.~~

~~(21) "Water judge" means a judge as provided for in Title 3, chapter 7.~~

~~(22) "Water master" means a master as provided for in Title 3, chapter 7.~~

~~(23) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.~~

~~(24) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.~~ ~~(Terminates June 30, 1999--sec. 4, Ch. 740, L. 1991.)~~

~~**85-2-102. (Effective July 1, 1999) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:~~

~~(1) "Appropriate" means to:~~

~~(a) to divert, impound, or withdraw (including by stock for stock water) a quantity of water;~~

~~(b) in the case of a public agency, to reserve water in accordance with 85-2-316;~~

~~(c) in the case of a federal agency or Indian tribe, hold a federal non-Indian or Indian reserved water right created under federal law;~~ ~~or~~

~~(c)~~(d) ~~in the Upper Clark Fork River basin, to maintain and enhance streamflows to benefit the fishery resource in accordance with 85-2-439.~~

~~(2) "Beneficial use", unless otherwise provided, means:~~

~~(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;~~

~~(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; or~~

~~(c) a use of water to maintain and enhance streamflows to benefit the fishery resource in the Upper Clark Fork River basin as part of the Upper Clark Fork River basin instream flow pilot program authorized under 85-2-439.~~

~~(3) "Certificate" means a certificate of water right issued by the department.~~

~~(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.~~

~~(5) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.~~

~~(6) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.~~

~~(7) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.~~

~~(8) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.~~

~~(9) "Ground water" means any water that is beneath the ground surface.~~

~~(10) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.~~

~~(11) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.~~

~~(12) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.~~

~~(13) "Political subdivision" means any county, incorporated city or town, public corporation, or district~~

~~created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.~~

~~(14) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.~~

~~(15) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.~~

~~(16) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.~~

~~(17) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.~~

~~(18) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.~~

~~(19) "Water division" means a drainage basin as defined in 3-7-102.~~

~~(20) "Water judge" means a judge as provided for in Title 3, chapter 7.~~

~~(21) "Water master" means a master as provided for in Title 3, chapter 7.~~

~~(22) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.~~

~~(23) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn.~~ ~~(Terminates June 30, 2005--sec. 14, Ch. 487, L. 1995.)~~

~~**85-2-102. (Effective July 1, 2005) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:~~

~~(1) "Appropriate" means to:~~

~~(a) divert, impound, or withdraw (including by stock for stock water) a quantity of water;~~

~~(b) in the case of a public agency, to reserve water in accordance with 85-2-316;~~

~~(c) in the case of a federal agency or Indian tribe, hold a federal non-Indian or Indian reserved water right created under federal law;~~ ~~or~~

~~(c)~~(d) ~~in the case of the department of fish, wildlife, and parks, to lease water in accordance with~~

~~85-2-436.~~

~~(2) "Beneficial use", unless otherwise provided, means:~~

~~(a) a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses;~~

~~(b) a use of water appropriated by the department for the state water leasing program under 85-2-141 and of water leased under a valid lease issued by the department under 85-2-141; and~~

~~(c) a use of water by the department of fish, wildlife, and parks pursuant to a lease authorized under 85-2-436.~~

~~(3) "Certificate" means a certificate of water right issued by the department.~~

~~(4) "Change in appropriation right" means a change in the place of diversion, the place of use, the purpose of use, or the place of storage.~~

~~(5) "Commission" means the fish, wildlife, and parks commission provided for in 2-15-3402.~~

~~(6) "Correct and complete" means that the information required to be submitted conforms to the standard of substantial credible information and that all of the necessary parts of the form requiring the information have been filled in with the required information.~~

~~(7) "Declaration" means the declaration of an existing right filed with the department under section 8, Chapter 452, Laws of 1973.~~

~~(8) "Department" means the department of natural resources and conservation provided for in Title 2, chapter 15, part 33.~~

~~(9) "Existing right" or "existing water right" means a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. The term includes federal non-Indian and Indian reserved water rights created under federal law and water rights created under state law.~~

~~(10) "Ground water" means any water that is beneath the ground surface.~~

~~(11) "Late claim" means a claim to an existing right forfeited pursuant to the conclusive presumption of abandonment under 85-2-226.~~

~~(12) "Permit" means the permit to appropriate issued by the department under 85-2-301 through 85-2-303 and 85-2-306 through 85-2-314.~~

~~(13) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency of the United States, or any other entity.~~

~~(14) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water. The term does not mean a private corporation, association, or group.~~

~~(15) "Salvage" means to make water available for beneficial use from an existing valid appropriation through application of water-saving methods.~~

~~(16) "State water reservation" means a water right created under state law after July 1, 1973, that reserves water for existing or future beneficial uses or that maintains a minimum flow, level, or quality of water throughout the year or at periods or for defined lengths of time.~~

~~(17) "Substantial credible information" means probable, believable facts sufficient to support a reasonable legal theory upon which the department should proceed with the action requested by the person providing the information.~~

~~(18) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.~~

~~(19) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including but not limited to geothermal water, diffuse surface water, and sewage effluent.~~

~~(20) "Water division" means a drainage basin as defined in 3-7-102.~~

~~(21) "Water judge" means a judge as provided for in Title 3, chapter 7.~~

~~(22) "Water master" means a master as provided for in Title 3, chapter 7.~~

~~(23) "Watercourse" means any naturally occurring stream or river from which water is diverted for beneficial uses. It does not include ditches, culverts, or other constructed waterways.~~

~~(24) "Well" means any artificial opening or excavation in the ground, however made, by which ground water is sought or can be obtained or through which it flows under natural pressures or is artificially withdrawn."~~

Section 1. Section 85-2-302, MCA, is amended to read:

"85-2-302. Application for permit. Except as otherwise provided in ~~(1) through (3) of~~ 85-2-306(1) through (3), a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works ~~therefor~~ except by applying for and receiving a permit from the department. The application ~~shall~~ must be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerk and recorders. The applicant shall submit a correct and complete application. ~~The department shall return a defective application for correction or~~

~~completion, together with the reasons for returning it. An application does not lose priority of filing because of defects if the application is corrected, completed, and refiled with the department within 30 days after its return to the applicant or within a further time as the department may allow. If an application is not corrected and completed within 30 days or within a further time as the department allows, up to 3 months, the priority date of the application shall be the date of refiling the application with the corrections with the department. An application not corrected within 3 months shall be terminated.~~ The department shall notify the applicant of any defects in an application. An application does not lose priority of filing because of defects if the application is corrected or completed within 30 days of the date of notification of the defects or within a further time as the department may allow, but not to exceed 90 days from the date of notification. If an application is made correct and complete after the mandated time period, but within 90 days of the date of notification of the defects, the priority date of the application is the date the application is made correct and complete. An application not corrected or completed within 90 days from the date of notification of the defects is terminated."

Section 2. Section 85-2-308, MCA, is amended to read:

"85-2-308. Objections. (1) (a) An objection to an application for a permit must be filed by the date specified by the department under 85-2-307(2).

(b) The objection to an application for a permit must state the name and address of the objector and facts ~~tending to show~~ indicating that one or more of the criteria in 85-2-311 are not met.

(2) For an application for a change in appropriation rights, the objection must state the name and address of the objector and facts ~~tending to show~~ indicating that one or more of the criteria in 85-2-402 are not met.

(3) A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation.

(4) For an application for a reservation of water, the objection must state the name and address of the objector and facts ~~tending to show~~ indicating that one or more of the criteria in 85-2-316 are not met.

(5) An objector to an application under this chapter shall ~~timely~~ file a correct and complete objection on a form prescribed by the department within the time period stated on the public notice associated with the application. THE DEPARTMENT SHALL NOTIFY THE OBJECTOR OF ANY DEFECTS IN AN OBJECTION. AN OBJECTION NOT CORRECTED OR COMPLETED WITHIN 15 DAYS FROM THE DATE OF NOTIFICATION OF THE DEFECTS IS TERMINATED.

(6) An objection is valid if the objector has standing pursuant to subsection (3), has filed a correct and

complete objection within the prescribed time period, and has stated the applicable information required under subsection (1), (2), or (4)."

Section 3. Section 85-2-309, MCA, is amended to read:

"85-2-309. Hearings on objections -- jurisdiction. (1) If the department determines that an objection to an application for a permit or change approval under 85-2-402 states a valid objection, it shall hold a ~~public~~ contested case hearing, pursuant to Title 2, chapter 4, part 6, on the objection within 60 days from the date set by the department for the filing of objections, after serving notice of the hearing by ~~certified~~ first-class mail upon the applicant and the objector, unless the department certifies an issue to the district court for determination by a water judge under subsection (2). The department may consolidate hearings if more than one objection is filed to an application. The department shall file in its records proof of the service by affidavit of the department.

(2) (a) At any time prior to commencement or before the conclusion of a hearing as provided in subsection (1), the department may in its discretion certify to the district court all factual and legal issues involving the adjudication or determination of the water rights at issue in the hearing, including but not limited to issues of abandonment, quantification, or relative priority dates. Certified controversies must be given priority by a water judge over all other adjudication matters.

(b) If the department fails to certify an issue as provided in this section after a timely request by a party to the hearing, the department shall include its denial to certify as part of the record of the hearing.

(c) Upon determination of the issues certified to it by the department, the court shall remand the matter to the department for further processing of the application under this chapter.

(3) Subsection (2) does not apply in the case of a matter considered at a hearing under this section pursuant to 85-2-316 or 85-2-322."

Section 4. Section 85-2-310, MCA, is amended to read:

"85-2-310. Action on application. (1) The department shall grant, deny, or condition an application for a permit in whole or in part within 120 days after the last date of publication of the notice of application if no objections have been received and within 180 days if a hearing is held or objections have been received. However, in either case the time may be extended upon agreement of the applicant, or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, not more than 60 days upon order of the department. If the department orders the time extended, it shall serve a notice of the extension

and the reasons ~~therefor~~ for the extension by ~~certified~~ first-class mail upon the applicant and each person who has filed an objection as provided by 85-2-308.

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department or denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions, or limitations specified by it or that the application should be denied, the department shall prepare a statement of its opinion and ~~the~~ its reasons ~~therefor~~ for the opinion. The department shall serve a statement of its opinion by ~~certified~~ first-class mail upon the applicant, ~~together~~ with a notice that the applicant may obtain a hearing by filing a request ~~therefor~~ within 30 days after the notice is mailed. The notice ~~shall~~ must further state that the application will be modified in a specified manner or denied, unless a hearing is requested.

(3) The department may cease action upon an application for a permit and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for ~~any~~ either of these reasons ~~shall~~ must be accompanied by a statement of the reasons for which it was returned, and there ~~shall be no~~ is not a right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection ~~shall be deemed~~ is a final decision of the department.

(4) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

(a) an application is not corrected and completed as required by 85-2-302;

(b) the appropriate filing fee is not paid;

(c) the application does not document:

(i) a beneficial use of water;

(ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet ~~per~~ a second or more, a detailed project plan describing when and how much water will be put to a beneficial use. The project plan must include a reasonable time line for the completion of the project and the actual application of the water to a beneficial use.

(iv) for appropriations not covered in subsection (4)(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and

(v) if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement fee, if any, is not paid as required by 85-2-124."

Section 5. Section 85-2-312, MCA, is amended to read:

"85-2-312. Terms of permit. (1) The department may issue a permit for less than the amount of water requested, but ~~in no case~~ may ~~it~~ not issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. The department may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria listed in 85-2-311, and it may issue temporary or seasonal permits. A permit ~~shall~~ must be issued subject to existing rights and any final determination of those rights made under this chapter.

(2) The department shall specify in the permit or in any authorized extension of time provided in subsection (3), the time limits for commencement of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use. In fixing those time limits, the department shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. The department shall issue the permit or authorized extension of time subject to the terms, conditions, restrictions, and limitations it considers necessary to ensure that the work on the appropriation is commenced, conducted, and completed and that the water is actually applied in a timely manner to the beneficial use specified in the permit.

(3) The department shall by rule or by condition to a permit establish a process allowing for the extension of the time limits specified in the permit for commencement of the appropriation works, completion of construction, and actual application of water to the proposed beneficial use. ~~The department may not accept a request for extension of time that is filed less than 30 days prior to the time limit specified in the permit.~~ If a permit is not

completed within the time limit specified or within an extension of that time limit, the permit is void upon lapse of the time limit.

(4) The original of the permit ~~shall~~ must be sent to the permittee, and a copy ~~shall~~ must be kept in the office of the department in Helena."

NEW SECTION. **Section 6. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 7. Notification to tribal governments.** The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

NEW SECTION. **Section 8. Effective date.** [This act] is effective on passage and approval.

- END -

AN ACT GENERALLY REVISING THE MONTANA WATER USE LAWS; CLARIFYING PROCEDURES FOR CORRECT AND COMPLETE PERMIT APPLICATIONS; CLARIFYING WHAT CONSTITUTES A VALID OBJECTION; CHANGING PROCEDURAL ASPECTS OF CERTAIN HEARINGS AND MAILINGS; ALTERING PROCEDURES FOR REQUESTING AN EXTENSION TO COMPLETE THE REQUIREMENTS FOR A WATER RIGHT PERMIT; AMENDING SECTIONS 85-2-302, 85-2-308, 85-2-309, 85-2-310, AND 85-2-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-302, MCA, is amended to read:

"85-2-302. Application for permit. Except as otherwise provided in ~~(1) through (3) of~~ 85-2-306(1) through (3), a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or related distribution works ~~therefor~~ except by applying for and receiving a permit from the department. The application ~~shall~~ must be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerk and recorders. The applicant shall submit a correct and complete application. ~~The department shall return a defective application for correction or completion, together with the reasons for returning it. An application does not lose priority of filing because of defects if the application is corrected, completed, and refiled with the department within 30 days after its return to the applicant or within a further time as the department may allow. If an application is not corrected and completed within 30 days or within a further time as the department allows, up to 3 months, the priority date of the application shall be the date of refiling the application with the corrections with the department. An application not corrected within 3 months shall be terminated.~~ The department shall notify the applicant of any defects in an application. An application does not lose priority of filing because of defects if the application is corrected or completed within 30 days of the date of notification of the defects or within a further time as the department may allow, but not to exceed 90 days from the date of notification. If an application is made correct and complete after the mandated time period, but within 90 days of the date of notification of the defects, the priority date of the

application is the date the application is made correct and complete. An application not corrected or completed within 90 days from the date of notification of the defects is terminated."

Section 2. Section 85-2-308, MCA, is amended to read:

"85-2-308. Objections. (1) (a) An objection to an application for a permit must be filed by the date specified by the department under 85-2-307(2).

(b) The objection to an application for a permit must state the name and address of the objector and facts ~~tending to show~~ indicating that one or more of the criteria in 85-2-311 are not met.

(2) For an application for a change in appropriation rights, the objection must state the name and address of the objector and facts ~~tending to show~~ indicating that one or more of the criteria in 85-2-402 are not met.

(3) A person has standing to file an objection under this section if the property, water rights, or interests of the objector would be adversely affected by the proposed appropriation.

(4) For an application for a reservation of water, the objection must state the name and address of the objector and facts ~~tending to show~~ indicating that one or more of the criteria in 85-2-316 are not met.

(5) An objector to an application under this chapter shall ~~timely~~ file a correct and complete objection on a form prescribed by the department within the time period stated on the public notice associated with the application. The department shall notify the objector of any defects in an objection. An objection not corrected or completed within 15 days from the date of notification of the defects is terminated.

(6) An objection is valid if the objector has standing pursuant to subsection (3), has filed a correct and complete objection within the prescribed time period, and has stated the applicable information required under subsection (1), (2), or (4)."

Section 3. Section 85-2-309, MCA, is amended to read:

"85-2-309. Hearings on objections -- jurisdiction. (1) If the department determines that an objection to an application for a permit or change approval under 85-2-402 states a valid objection, it shall hold a ~~public~~ contested case hearing, pursuant to Title 2, chapter 4, part 6, on the objection within 60 days from the date set by the department for the filing of objections, after serving notice of the hearing by ~~certified~~ first-class mail upon the applicant and the objector, unless the department certifies an issue to the district court for determination by

a water judge under subsection (2). The department may consolidate hearings if more than one objection is filed to an application. The department shall file in its records proof of the service by affidavit of the department.

(2) (a) At any time prior to commencement or before the conclusion of a hearing as provided in subsection (1), the department may in its discretion certify to the district court all factual and legal issues involving the adjudication or determination of the water rights at issue in the hearing, including but not limited to issues of abandonment, quantification, or relative priority dates. Certified controversies must be given priority by a water judge over all other adjudication matters.

(b) If the department fails to certify an issue as provided in this section after a timely request by a party to the hearing, the department shall include its denial to certify as part of the record of the hearing.

(c) Upon determination of the issues certified to it by the department, the court shall remand the matter to the department for further processing of the application under this chapter.

(3) Subsection (2) does not apply in the case of a matter considered at a hearing under this section pursuant to 85-2-316 or 85-2-322."

Section 4. Section 85-2-310, MCA, is amended to read:

"85-2-310. Action on application. (1) The department shall grant, deny, or condition an application for a permit in whole or in part within 120 days after the last date of publication of the notice of application if no objections have been received and within 180 days if a hearing is held or objections have been received. However, in either case the time may be extended upon agreement of the applicant, or, in those cases where an environmental impact statement must be prepared or in other extraordinary cases, not more than 60 days upon order of the department. If the department orders the time extended, it shall serve a notice of the extension and the reasons ~~therefor~~ for the extension by ~~certified~~ first-class mail upon the applicant and each person who has filed an objection as provided by 85-2-308.

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department or denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions, or limitations specified by it or that the application should be denied, the department shall prepare a statement of its opinion and ~~the~~ its reasons ~~therefor~~ for the opinion. The department shall serve a statement of its opinion by ~~certified~~ first-class mail upon the applicant, ~~together~~ with

a notice that the applicant may obtain a hearing by filing a request ~~therefor~~ within 30 days after the notice is mailed. The notice ~~shall~~ must further state that the application will be modified in a specified manner or denied, unless a hearing is requested.

(3) The department may cease action upon an application for a permit and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for ~~any~~ either of these reasons ~~shall~~ must be accompanied by a statement of the reasons for which it was returned, and there ~~shall be no~~ is not a right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection ~~shall be deemed~~ is a final decision of the department.

(4) For all applications filed after July 1, 1973, the department shall find that an application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use if:

(a) an application is not corrected and completed as required by 85-2-302;

(b) the appropriate filing fee is not paid;

(c) the application does not document:

(i) a beneficial use of water;

(ii) the proposed place of use of all water applied for;

(iii) for an appropriation of 4,000 acre-feet a year or more and 5.5 cubic feet ~~per~~ a second or more, a detailed project plan describing when and how much water will be put to a beneficial use. The project plan must include a reasonable time line for the completion of the project and the actual application of the water to a beneficial use.

(iv) for appropriations not covered in subsection (4)(c)(iii), a general project plan stating when and how much water will be put to a beneficial use; and

(v) if the water applied for is to be appropriated above that which will be used solely by the applicant or if it will be marketed by the applicant to other users, information detailing:

(A) each person who will use the water and the amount of water each person will use;

(B) the proposed place of use of all water by each person;

(C) the nature of the relationship between the applicant and each person using the water; and

(D) each firm contractual agreement for the specified amount of water for each person using the water; or

(d) the appropriate environmental impact statement fee, if any, is not paid as required by 85-2-124."

Section 5. Section 85-2-312, MCA, is amended to read:

"85-2-312. Terms of permit. (1) The department may issue a permit for less than the amount of water requested, but ~~in no case~~ may ~~it~~ not issue a permit for more water than is requested or than can be beneficially used without waste for the purpose stated in the application. The department may require modification of plans and specifications for the appropriation or related diversion or construction. The department may issue a permit subject to terms, conditions, restrictions, and limitations it considers necessary to satisfy the criteria listed in 85-2-311, and it may issue temporary or seasonal permits. A permit ~~shall~~ must be issued subject to existing rights and any final determination of those rights made under this chapter.

(2) The department shall specify in the permit or in any authorized extension of time provided in subsection (3), the time limits for commencement of the appropriation works, completion of construction, and actual application of the water to the proposed beneficial use. In fixing those time limits, the department shall consider the cost and magnitude of the project, the engineering and physical features to be encountered, and, on projects designed for gradual development and gradually increased use of water, the time reasonably necessary for that gradual development and increased use. The department shall issue the permit or authorized extension of time subject to the terms, conditions, restrictions, and limitations it considers necessary to ensure that the work on the appropriation is commenced, conducted, and completed and that the water is actually applied in a timely manner to the beneficial use specified in the permit.

(3) The department shall by rule or by condition to a permit establish a process allowing for the extension of the time limits specified in the permit for commencement of the appropriation works, completion of construction, and actual application of water to the proposed beneficial use. ~~The department may not accept a request for extension of time that is filed less than 30 days prior to the time limit specified in the permit.~~ If a permit is not completed within the time limit specified or within an extension of that time limit, the permit is void upon lapse of the time limit.

(4) The original of the permit ~~shall~~ must be sent to the permittee, and a copy ~~shall~~ must be kept in the office of the department in Helena."

Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid

part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

Section 8. Effective date. [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,
HB 0095, originated in the House.

_____

Chief Clerk of the House

_____

Speaker of the House

Signed this _____ day
of _____, 2019.

_____

President of the Senate

Signed this _____ day
of _____, 2019.

HOUSE BILL NO. 95

INTRODUCED BY B. STORY

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

AN ACT GENERALLY REVISING THE MONTANA WATER USE LAWS; CLARIFYING PROCEDURES FOR CORRECT AND COMPLETE PERMIT APPLICATIONS; CLARIFYING WHAT CONSTITUTES A VALID OBJECTION; CHANGING PROCEDURAL ASPECTS OF CERTAIN HEARINGS AND MAILINGS; ALTERING PROCEDURES FOR REQUESTING AN EXTENSION TO COMPLETE THE REQUIREMENTS FOR A WATER RIGHT PERMIT; AMENDING SECTIONS 85-2-302, 85-2-308, 85-2-309, 85-2-310, AND 85-2-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

HB 95 Introduced by Story *LC0153 Drafter: K. Williams*

Generally Revise the Montana Water Use Laws;...

By Request of Department of Natural Resources and Conservation

12/17	Introduced		
12/21	Referred to Natural Resources		
1/04	1st Reading		
1/08	Hearing		
1/19	Committee Executive Action--Bill Passed as Amended	17	1
1/19	Committee Report--Bill Passed as Amended		
1/22	2nd Reading Passed	96	3
1/23	3rd Reading Passed	97	2
	Transmitted to Senate		
1/27	Referred to Natural Resources		
3/03	Hearing		
3/04	Committee Executive Action--Bill Concurred as Amended	8	0
3/04	Committee Report--Bill Concurred as Amended		
3/05	2nd Reading Concurred	50	0
3/06	3rd Reading Concurred	48	0
	Returned to House with Amendments		
4/09	2nd Reading Senate Amendments Concurred	97	0
4/10	3rd Reading Passed as Amended by Senate	98	1
4/10	Sent to Enrolling		
4/12	Returned from Enrolling		
4/13	Signed by Speaker		
4/14	Signed by President		
4/15	Transmitted to Governor		
4/23	Signed by Governor		
4/23	Chapter Number Assigned		
	Chapter Number 422		
	Effective Date: 4/23/1999 - All Sections		

HB 96 Introduced by Grinde *LC0151 Drafter: Everts*

Allocate for Reciprocal Access Agreements to Be Negotiated on All Isolated State Land Classifications;...

By Request of Department of Natural Resources and Conservation

12/18	Introduced		
12/23	Referred to Natural Resources		
1/04	1st Reading		
1/13	Hearing		
1/20	Tabled in Committee		
2/02	Committee Executive Action--Bill Passed	11	9
2/02	Committee Report--Bill Passed		
2/13	2nd Reading Passed	59	40
2/15	3rd Reading Passed	65	33
	Transmitted to Senate		
2/23	Referred to Natural Resources		
3/10	Hearing		
3/18	Committee Executive Action--Bill Concurred	10	0
3/18	Committee Report--Bill Concurred		

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on January 8, 1999 at 3:00 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:
Rep. Bill Tash, Chairman (R)
Rep. Hal Harper, Vice Chairman (D)
Rep. Cindy Younkin, Vice Chairman (R)
Rep. Rod Bitney (R)
Rep. Aubyn A. Curtiss (R)
Rep. Rick Dale (R)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. David Ewer (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Dan McGee (R)
Rep. Douglas Mood (R)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. Bob Story (R)
Rep. Jay Stovall (R)
Rep. Carley Tuss (D)
Rep. Doug Wagner (R)

Members Excused: None.

Members Absent: None.

Staff Present: Deb Thompson, Committee Secretary
Kathleen Williams, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearings & Date Posted: HB 29, HB 95
Executive Action: January 5, 1999

HEARING ON HOUSE BILL 29

Sponsor: Rep. Karl Ohs, HD 33, presented HB 29. He explained this bill would allow for an increase on the bonding authority for the Resource Indemnity Trust up to $20 million. This would encourage economic development for agriculture, making loans available for irrigation projects for the purpose of crop diversification.

Proponents: Ray Beck, representing Department of Natural Resources loan program, discussed the increased need for the loan program for irrigation companies. He pointed out the program did not compete with banks and the program was the only funding source for these types of loans. He presented written testimony from Ralph Peck, Director of the Montana Department of Agriculture **EXHIBIT(nah05a01).**

Mike Volesky, representing the Montana Association of Conservation Districts, spoke about the importance of improvements in water quality in those districts.

Opponents: Mike Barrett, representing himself as a poet and philosopher, spoke against the way the bill would spend money. He expressed his opinions regarding orderly systems and the disturbance in climatic trends **EXHIBIT(nah05a02).**

Questions from Committee Members and Responses: Rep. Ewer asked about the status of the fiscal note. ***{Tape : 1; Side : A; Approx. Time Counter : 13.2}*** John Tubbs, DNRC, replied this would allow the program to continue to issue loans for the water development program. He pointed out this was not subsidizing but instead made market rate loans available. Rep. Ewer noted this was a general obligation bond which was an enhancement to the program because of the lower cost of capital.

Rep. Mood asked if this program was coordinated with the issue of doubling the irrigated acres in the state. Rep. Ohs replied this was not included with the Jobs and Income bills but would be needed to help facilitate increasing irrigated acres.

Rep. Raney asked Mr. Beck about the mechanics regarding issuing bonding authority to back the loans. Beck replied a 2/3 vote was need to appropriate the money but there was no cost to the state. Defaults are covered by excess payments from loans that were paid early. The Coal Tax backs the bonds.

Closing by Sponsor: Rep. Ohs asked the committee to look at the economic development advantages. He said not only was this more efficient but a better use of water. This program is successful and beneficial to those upgrading their systems.

HEARING ON HOUSE BILL 95

Sponsor: Rep. Bob Story, HD 24, presented HB 95. The bill would update sections in the law, specifically defining the word "appropriate".

Proponents: Jack Shults, Administrator of the Water Resources Division, discussed the bill. ***{Tape : 1; Side : A; Approx. Time Counter : 22.8-36.1}*** He said this bill covered general changes to the statute which govern how DNRC covers the water rights statute. **EXHIBIT(nah05a03)** He explained "appropriate" was a fundamental term within the law. He said the bill did not alter existing policy. He distributed the Water Rights in Montana booklet. **EXHIBIT(nah05a04)**

John Metropolis, attorney in Helena representing the Flathead Joint Board of Control, the central operating authority for three irrigation districts located on the Flathead Reservation, presented his viewpoint. He explained there are 113 thousand acres within their boundary of irrigated lands and another 14 thousand acres outside the boundary served by the irrigation project. He spoke in support of the bill for the purpose of clarification. He pointed out the word "appropriate" does not recognize the legal fact that individuals can also hold non-Indian or Indian reserved water rights or a portion thereof.

Opponents: George Heavy Runner, representing the Blackfoot Tribal Business Council, spoke in opposition to the bill. He explained the Blackfoot Tribe possess significant water rights in Montana. The Blackfoot were involved in negotiations with the Water Rights Compact Commission which would put into question the intentions of the state. **EXHIBIT(nah05a05)** He said their water rights were unique under federal law not state law.

George Ochenski, representing the Salish Kootenai Tribe, spoke against the bill. **EXHIBIT(nah05a06)** The two classes of water rights, the aboriginal rights and the federal reserved water rights, do not rely on State law for their existence. "Appropriation" creates weakness in the law regarding the uniqueness of Indian rights.

Rep. Carol Juneau spoke against the bill. She has the Blackfeet Reservation in her district and support the tribes opposition.

Questions from Committee Members and Responses: Rep. Harper asked Don MacIntyre ***{Tape : 1; Side : A; Approx. Time Counter : 51.7}*** whether or not the amendment was critical since it appeared to jeopardize cooperation with the tribe. MacIntyre replied that one of the issues raised by the Salish Kootenai Tribe in a court case, where it provided that a holder of an existing right, a prior appropriator, if their right is being adversely affected they can be an objector in the permitting of a new permit in Montana. The Tribe argued that in the State of Montana the term "appropriate" does not include federal Indian and non-Indian reserved water rights they did not fall within the class of prior appropriator. MacIntyre stated, what is being said is "we don't want the State of Montana issuing permits - period", when it comes to federal reserved rights when the tribes are objectors.

Rep. Mood ***{Tape : 1; Side : A; Approx. Time Counter : 55.5-58.5}*** asked for clarification. He asked if the tribes possessed absolute water rights how could the state permit some of their rights. MacIntyre replied, appropriation in regards to water rights means take the water, such as putting it to a beneficial use. Federal Reserved Rights or Aboriginal Rights are clearly recognized in both federal government agencies and with the Tribes. They can hold the water for in-stream purposes, where there is no diversion or appropriation. What the state has said since it passed the water use act is the term "prior appropriator", which is generally thought to be the person who has the water right, includes those who have in-stream flows which would include the Tribes. There was a general understanding that the Tribes were prior appropriators. However, when they raised the issue in their legal arguments before the Supreme Court because this definition does not include them, they are not a prior appropriator under Montana statute. This is only trying to put them back in there so it is clear that they are prior appropriators, not trying to assert jurisdiction over the Tribes and their rights.

Rep. Mood asked Mr. Heavy Runner to respond. Heavy Runner replied it was in the "eyes of the believer". He noted it was interesting how MacIntyre had talked about the correlation of the amendment with the timeliness to the Supreme Court issue right now. He pointed out the importance of waiting for the court decision before circumventing or try to fix something with respect to this issue.

Rep. Younkin asked Mr. MacIntyre what the practical effect of adding the definition of "appropriate" was in regards to a downstream permit applicant. MacIntyre replied if an applicant doesn't have to prove adverse affect to a reserved right then the Tribe has no standing before the agency. Rep. Younkin asked if

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EXHIBIT 3
DATE 1/8/99
HB 95

TESTIMONY BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE

HOUSE BILL NO. 95

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

JANUARY 8, 1999

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA WATER USE LAWS; CLARIFYING THAT TO APPROPRIATE WATER INCLUDES HOLDING A FEDERAL NON-INDIAN OR INDIAN RESERVED WATER RIGHT CREATED UNDER FEDERAL LAW; CLARIFYING PROCEDURES FOR CORRECT AND COMPLETE PERMIT APPLICATIONS; CLARIFYING WHAT CONSTITUTES A VALID OBJECTION; CHANGING PROCEDURAL ASPECTS OF CERTAIN HEARINGS AND MAILINGS; ALTERING PROCEDURES FOR REQUESTING AN EXTENSION TO COMPLETE THE REQUIREMENTS FOR A WATER RIGHT PERMIT; AMENDING SECTIONS 85-2-102, 85-2-302, 85-2-308, 85-2-309, 85-2-310, AND 85-2-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Over the years, DNRC and water users have made changes to the Montana Water Use Act of 1973. This bill proposes minor changes to the law to help water users and the department use the Act more effectively and efficiently.

Section 1 amends 85-2-102 to make it explicit that under Montana law the holder of a federal reserved water right holds an appropriation right. A federal reserved right is a unique type of water right based on a federal land use action such as creating a National Park or a tribal reservation. It may not involve a diversion at the time it becomes effective. All western states recognize federal reserved rights as appropriations. Although the Montana DNRC has historically interpreted the Montana Water Use Act to embody the holders of federal reserved water rights as a prior appropriator, this amendment removes any argument to the contrary. It will now be explicitly clear.

Section 2 of the bill clarifies 85-2-302 where it relates to a permit application which has defects. The statute allows 30 days for the application to be corrected and completed without losing the priority date issued at filing. Additionally, the department can allow up to 3 months from initial receipt of the defective application for correction and completion but after the first 30 days, the priority date is adjusted to the date that adequate information is received by the department so the application is no longer considered defective. If the application is not corrected within 3 months it is terminated. This "*clock begins ticking*" when the department *returns* a defective application. However, most applications are so voluminous, it is not reasonable to return the entire packet of material. This has never been convenient to the applicants or the department. Instead, this bill proposes a language change to allow the department to *contact* the applicant regarding deficiencies rather than return the application materials. This is a much more efficient way to handle this function.

Section 3 of the bill amends 85-2-308 to make it clearer on the criteria that have to be met before there is a valid objection to a permit or change application. The bill also identifies the objection deadline as the date that is included in the public notice. Both of these changes remove some ambiguity that has troubled people involved in the application process.

Section 4 of the bill amends 85-2-309 and 85-2-310 to remove the requirement for the department to contact applicants by **certified** mail regarding hearings, extensions, and permit and authorization conditions. This change would allow the department to contact applicants by first class mail thus saving time and money. Certified mail adds unnecessary cost and burden to the process. Receiving first class mail is simpler for the water users since the mail can be delivered without requiring someone to be present to sign for the letter. Undelivered first class mail is returned to sender, thus, still providing the department with a means of tracking notices and addresses. Additionally, first class mail is a very dependable and efficient means of notifying water users.

Finally, he bill removes in 85-2-312 (3), the requirement for an appropriator to give the department, at least, a 30-day notice that the appropriator wishes an extension of time to complete the project. In the past, the 30-day time frame was needed to give the department enough time to give pubic notice that an extension was requested for the project. Since the department realized there were virtually no valid objections to extension applications and that this notice added unnecessary cost and time to the process it removed the notice requirement from its administrative rules. Therefore, there is no longer any need for the applicant to give the department a 30-day advance notice.

The department strongly encourages passage of this legislation as it clarifies a number of ambiguous terms and makes the water right permit process more efficient for the water user.

Exhibit # 4
From Jack Shultz
The full exhibit is available from:
Montana Historical Society Archives
225 North Roberts
PO Box 201201
Helena, MT 59602-1201
Phone: (406) 444-4775

Montana Department of Natural Resources and Conservation

48 North Last Chance Gulch
P.O. Box 201601
Helena, Montana 59620-1601

1,900 copies of this public document were published at an estimated cost of 47¢ per copy. The total cost of $893.00 includes $893.00 for printing and $.00 for distribution.

EXHIBIT 5
DATE 1/8/99
HB 95

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BLACKFEET NATION

P.O. Box 850 • BROWNING, MONTANA 59417
(406)338-7521 • FAX 338-7530

EXECUTIVE COMMITTEE

WILLLIAM "BILL" OLD CHIEF-CHAIRMAN
ROGER RUNNING CRANE-VICE-CHAIRMAN
GEORGE HEAVY RUNNER-SECRETARY
HOWARD DOORE-ACTING SECRETARY
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BERNARD ST. GODDARD
CARL KIPP
HUGH MONROE
ROCK B. GOBERT JR.

January 8, 1999

STATEMENT OF THE BLACKFEET TRIBE ON HOUSE BILL 95

House Bill 95 amends the definition of "appropriate" in Section 85-2-102, Montana Code Annotated, to mean to "hold a federal non-Indian reserved or Indian reserved water right created under Federal law." This amendment will no doubt raise questions concerning the State's intentions regarding Indian water rights, and the amendment will have a definite chilling effect on on-going water rights negotiations.

The very essence of an Indian reserved water right is that it is not an appropriative right under state law, but a unique right under Federal law. As stated by the Montana Supreme Court in the case of State v. Confederated Salish & Kootenai Tribe, 712 Pacific Reporter 754, 762 (1985):

> Appropriate right are based on actual use. Appropriation for beneficial use is governed by state law. Reserved water rights are established by reference to the purposes of the reservation rather than to actual, present use of the water. The basis for an Indian reserved water right is the treaty, federal statute or Executive order setting aside the reservation. Treaty interpretation and statutory Construction are governed by Federal Indian law.

By including Indian reserved water rights within the definition of "appropriate" in Montana law, the amendment comes into direct conflict with Federal law.

The amendment also raises further questions about the State's intentions concerning Indian water rights. Since appropriation of water under state law is tied to

beneficial purposes, the amendment could be interpreted as restricting Indian reserved water rights to use for beneficial purposes. Wherever the terms "appropriate", "appropriator", "appropriative right", or other such terms are used in the Montana Water Use Act, the question is raised as to whether Indian reserved water rights and Federal reserved water rights are being subjected to state law. An attempt by the Legislature to subject Indian water rights to state law would not only be contrary to Federal law, but such an attempt would undermine the very essence of Indian water rights. Such an action on the part of the Legislature would raise the issue of whether Indian tribes will receive fair treatment by the State-an assumption that underlay the United States Supreme Court's willingness to allow adjudication of Indian water rights in state courts. The result may very well be that the Montana Water Use Act would no longer be adequate to adjudicate Indian water rights and that proceedings under this Act would no longer be proceedings which fall within the adjudicatory jurisdiction of the McCarran Amendment.

The Blackfeet Tribe also questions the timing of this amendment. Just as the Confederated Salish and Kootenai Tribes' challenges to the amendments enacted by the last Legislature are being heard by the State Supreme Court, the Legislature, prompted by the State Department of Natural Resources and Conservation, is contemplating new amendments that raise further questions about the State's intentions with regard to Indian water rights.

As in the case of the amendments that are now under challenge by the Confederated Salish and Kootenai Tribes, these further amendments directly impact ongoing water rights negotiations, and raise the question of whether those negotiations are being conducted in good faith. While the good faith of t he Montana Reserved Water

Rights Compact Commission is not in question, the attempts to amend the Montana Water Use Act by the Legislature at the request of a State agency will have a definite chilling effect on any negotiations between the Compact Commission and the Blackfeet Tribe. The amendments enacted by the Legislature two years ago raised substantial concerns about whether the Blackfeet Tribe would be treated fairly in the negotiation process. The proposed amendments pending before this Legislature add further fuel to those concerns, and can only serve to raise the apprehensions of the Blackfeet Tribe in water rights negotiations between the Blackfeet Tribe and the State Water Rights Compact Commission.

Another point to be made in opposition to the proposed amendments is that the Blackfeet Tribe has dealt with the legislative, executive and bureaucratic branches of the State of Montana in the ongoing water rights negotiations. It has taken the Blackfeet Tribe considerable time to discuss and review the issues and concerns involved in water rights before deciding to enter into negotiations with the State of Montana. There has been a significant amount of progress in the negotiations. These negotiations have been based on the good faith of the parties involved in the negotiations. Within the past month, the Blackfeet Tribe met with State officials in Helena to continue the process of refining and resolving the issues which have been raised in the negotiations. The issue of amending the State definition of "appropriate" has never arisen in the negotiations. Now, the Blackfeet Tribe faces the prospect of having to re-evaluate the decision to enter into negotiations because of a lack of clear, unilateral direction on the part of State officials. This attempt to circumvent the negotiation and quantification process is unacceptable. The fact of the matter is that the proposed amendments will undoubtedly be viewed as an

infringement on the sovereign reserved water rights of the Blackfeet Tribe. Coupled with the fact that the water rights on the Blackfeet Indian Reservation have not yet been quantified, there is little doubt but that the proposed amendments will have a detrimental impact on future negotiations between the Blackfeet Tribe and State officials.

The Blackfeet Tribe and the State of Montana can work together to define common areas of concern and provide solutions to contemporary problems. Unfortunately, the proposed amendments to the Montana Water Use Act do not serve the best interests of either party. Passage of the amendments will have the predictable consequence of creating distrust and cynicism between the Blackfeet Tribe and the State of Montana.

For these reasons, the Blackfeet Tribe respectfully requests that the State Legislature reject the proposed amendments to the Montana Water Use Act which involve a re-definition of "appropriate".

Thank you for your time and consideration.

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THE CONFEDERATED SALISH AND KOOTENAI TRIBES
OF THE FLATHEAD NATION
P.O. Box 278
Pablo, Montana 59855
(406) 675-2700
FAX (406) 675-2806

EXHIBIT 6
DATE 1/8/99
HB 95

Joseph E. Dupuis - Executive Secretary
Vern L. Clairmont - Executive Treasurer
Frederick Cordier - Sergeant-at-Arms

TRIBAL COUNCIL MEMBERS:
Michael T. Pablo - Chairman
D. Fred Matt - Vice Chairman
Carole J. Lankford - Secretary
Wm. Joseph Moran - Treasurer
Donald "Donny" Dupuis
Michael Durglo, Jr.
Jewl Harrel
Mary Lefthand
Elmer "Sonny" Morigeau
Gary Stevens

January 8, 1999

BY FACSIMILE

Honorable Bill Tash, Chairman
Natural Resources Committee
Montana Legislature
State Capitol
Helena, Montana

Dear Chairman Tash:

After preliminary review the Confederated Salish and Kootenai Tribes have concluded that they stand in opposition to House Bill 95 in its present form. The Tribes initially oppose the bill for the following reasons:

A new class of "appropriator" is created by amending § 85-2-102 MCA to include the statement that "'Appropriate' means to: . . . (d) in the case of a federal agency or Indian tribe, hold a federal non-Indian or Indian reserved water right created under federal law." Without knowing the case law, I don't see how changing tribes in name to be a new subclass of "appropriators" repairs the deficiencies inherent in § 85-2-311. Particularly so, because the Montana Supreme Court in Ciotti I, expressly referred to the Confederated Salish and Kootenai Tribes as "a prior appropriator" for purposes of analyzing the logic (or lack of logic in this case) of § 85-2-311. So, even if this new "appropriator" subclass was valid, it does not make the permitting criteria included in § 85-2-311 logical or comprehensive. It will not remedy the deficiencies noted by the Court in Ciotti I.

More obviously, an attempt to reclassify tribal water rights as being an "appropriation" authorized pursuant to State law is simply inaccurate and plainly inconsistent with federal law. Tribes have at least two classes of rights to water that do not rely on State law for their existence: (1) aboriginal rights; and (2) federal reserved water rights. Attempting to classify tribal rights which arise from either of these classes as "appropriations" will create additional infirmity in the

statute. Please refer to Montana Supreme Court opinions in Ciotti I and Greely for controlling language regarding the uniqueness of Indian rights.

I appreciate the opportunity to comment on the bill.

Sincerely,

Michael T. Pablo
Chairman - Tribal Council

HOUSE BILL NO. 29

INTRODUCED BY OHS K

BY REQUEST OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING TO $20 MILLION THE AUTHORITY TO ISSUE GENERAL OBLIGATION BONDS TO MAKE LOANS TO INDIVIDUALS AND WATER ASSOCIATIONS UNDER THE RENEWABLE RESOURCE GRANT AND LOAN PROGRAM; AUTHORIZING THE CREATION OF A STATE DEBT; AMENDING SECTION 85-1-624, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-1-624, MCA, is amended to read:

"85-1-624. Authorization of bonds. The board of examiners is authorized to issue and sell general obligation renewable resource bonds for the renewable resource grant and loan program created under Title 85, chapter 1, part 6, in accordance with the terms and conditions and in the manner provided in 85-1-617 from time to time and in amounts that, taking into consideration the principal amount of any renewable resource bonds then outstanding, will not cause the total aggregate principal amount of renewable resource bonds outstanding at any time to exceed ~~$10~~ $20 million."

NEW SECTION. **Section 2. Two-thirds vote required.** Because [section 1] authorizes the creation of state debt, Article VIII, section 8, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

NEW SECTION. **Section 3. Effective date.** [This act] is effective July 1, 1999.

- END -

this would give the holder of that water right standing to object to the downstream permit application. MacIntyre said under the argument they made before the Supreme Court this law would have to be this way before they could be considered a prior appropriator. He said this question was one of the issues before the Supreme Court.

{Tape : 1; Side : B; Approx. Time Counter : 1.6}
Rep. Stovall asked what DNRC's purpose was in submitting the amendment at this time. Shults replied the timing was coincidental. The reason for putting this in now was in direct response to statements of concern by the tribe regarding ambiguity that appeared to lessen their standing in the process. The goal was to strengthen their standing and make the issue explicitly clear when you apply for water rights in the State.

Rep. Eggers asked if there was a federal preemption issue here and if this clause implied that the State had jurisdiction over the subject matter. MacIntryre replied it was not a question of federal preemption and the State was not attempting to gain jurisdiction or regulation over a tribal entity. This is simply a recognition in state law that a reserved water right held by a federal entity is recognized in state law so in the permitting process, an applicant has to take that into account when they seek either a permit or a change. ***{Tape : 1; Side : B; Approx. Time Counter : 8.8}***

Rep. Eggers said the inclusion of the clause carried an implication that the State has jurisdiction over the subject matter. MacIntyre replied the State has jurisdiction over water resources of the State of Montana and with respect to adjudication of those rights the State of Montana has the jurisdiction to determine quantification of those rights within state courts. In terms of the administration of the water rights, that is not as clear. Once the adjudication is complete, if the water is not being used, it is subject to appropriation but subordinate to a federal right. If there are surplus waters within the exterior boundaries after adjudication is complete the State of Montana has jurisdiction over those waters.

Rep. McGee asked if federal land, such as Glacier Park, had prior reserved federal water rights. MacIntyre replied this was talking about reservations created by federal law, such as the national park. In that creation, the law does recognize that there are implied water rights. The date of that reservation is the date of that right. Rep. McGee pointed out lines 24-25 "in case of a federal agency or Indian Tribe". He asked what would happen if the American Heritage Rivers Act identified the Yellowstone River from its source into the Missouri River as the

American Heritage River corridor so that all the drainages were included, what would happen to the water rights with this definition. MacIntyre replied we would continue to have senior rights and would continue to exercise that right unless Congress explicitly created a right and condemned particular rights and that would need to be compensated. He clarified that this language was for purposes of the water use act. It does not create water rights for anyone but simply recognizes that the right exists. The person holding it is considered to be a prior appropriator.

Rep. Erickson pointed out, referencing section 3 #6 language, that the tribes have standing without adding the first page, where the new definition was not needed in order to have standing. MacIntyre said that was true but the issue of page one was the criteria section of the law. The tribe had argued that they were not a prior appropriator so they would not be able to raise adverse effect tests to their water rights in a permit preceding.

Rep. Harper ***{Tape : 1; Side : B; Approx. Time Counter : 14.8}*** clarified that to define the tribe as prior appropriators would mean that they would have to be involved as objectors in this process so that new appropriation being sought could go through. Harper asked if this meant that the tribes felt they do not have to immediately object and become involved in the process since they have an appropriation of a different level and they should maintain that standing regardless of what the State does. He noted that it appeared, with this change in the law, they would be forced into objecting or they would loose their standing and only gain it when all these reserved water rights are finally solved.

MacIntyre replied the short answer was no. ***{Tape : 1; Side : B; Approx. Time Counter : 18.9}*** He explained the State of Montana had created a process for acquiring permits that allows objectors to provide information as to why the rights should not be granted. He clarified with respect to the reserved water rights, those held specifically by the tribes, the tribes would file what is called a jurisdictional objection saying they have the water rights and they will not go through the objection process. However, the argument they made and the reason they do not want to come into this process, is because they believe they would be subjecting their rights to adjudication in an administrative form. The Department of Natural Resources and all the McCarren amendment does is subject it to the State form. The difference in legal positions is that the State takes the position is there is no adjudication in a permitting process. The only place you can adjudicate water rights is in the courts. The administrative

process is a process that is forward looking to try and help people. This says before you can get a water right you have to go through a process to try and establish that you are not injuring other senior users. The amendment does not force the tribes to come in it simply reacts to their constitutional argument. The law protects the tribes just like any other senior water user.

Rep. Harper questioned whether in-stream flow was an appropriation in all cases whether impounding, diverting or drawing water. MacIntyre replied that in-stream flow under Montana law as it currently exists, is an appropriation. He stated that the hole that was left was federal rights were created under state law. It is an all encompassing law that says no matter what kind of right you hold, federal or created under state law, whether it has diversion for beneficial use or whether it is in-stream for beneficial use, everybody is protected the same as a holder of an existing water right.

Closing by Sponsor: Rep. Story closed. He said it was a complex issue and should be talked over before executive action.

ADJOURNMENT

Adjournment: 4:25 P.M.

_____
REP. BILL TASH, Chairman

_____
DEB THOMPSON, Secretary

BT/DT

EXHIBIT(nah05aad)

HOUSE OF REPRESENTATIVE
ROLL CALL

NATURAL RESOURCES COMMITTEE

DATE 1-8-99

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bill Tash, Chairman	✓		
Rep. Hal Harper, Vice Chair	✓		
Rep. Cindy Younkin, Vice Chair	✓		
Rep. Rod Bitney	✓		
Rep. Aubyn Curtiss	✓		
Rep. Rick Dale	✓		
Rep. Bill Eggers	✓		
Rep. Ron Erickson	✓		
Rep. David Ewer	✓		
Rep. Gail Gutsche	✓		
Rep. Joan Hurdle	✓		
Rep. Dan McGee	✓		
Rep. Douglas Mood	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr	✓		
Rep. Bob Raney	✓		
Rep. Bob Story	✓		
Rep. Jay Stovall	✓		
Rep. Carley Tuss	✓		
Rep. Doug Wagner	✓		

VISITOR REGISTER

HOUSE NATURAL RESOURCES COMMITTEE

DATE: 1-8-98

BILL NO: 29 **SPONSOR:** REP. OHS

NAME AND ADDRESS (PLEASE PRINT)	REPRESENTING	TYPE OF WITNESS		
		Informational	Support	Oppose
[illegible]	DNRC		X	
[illegible]	DNRC		X	
Jill Andrews	Mt. Mining	✓		
Mike Garrett	Helena Citizens. Cncl. DIST. #4	✓		✓
[illegible]	MT Assoc of Cons. Dists.		✓	
Mike Murphy	MT. WATER RES. ASSOC.		✓	

Please leave prepared testimony with secretary.
Witness statement forms are available if you care to submit written testimony.

VISITOR REGISTER

HOUSE NATURAL RESOURCES COMMITTEE

DATE: 1-8-98

BILL NO: 95 **SPONSOR:** REP. STORY

NAME AND ADDRESS (PLEASE PRINT)	REPRESENTING	TYPE OF WITNESS		
		Informational	Support	Oppose
DON MACINTYRE	DNRC		✓	
GEORGE OCHENSKI	CS+KT			✓
Jill Andrews	Mt Mining	✓		
JACK STULTS	DNRC		✓	
George Henry Runner	Blackfeet Tribe			✓
Kathleen Fleury	Blackfeet Tribe			✓
	JBC	X		
Harley Harris	AG	not	witness	
	HDRJ			✓
	JBC		X	

Please leave prepared testimony with secretary.
Witness statement forms are available if you care to submit written testimony.

DATE: Jan. 8 1999

LEGISLATIVE TAPE LOG

HOUSE Natural Res COMMITTEE

TAPE COUNT	BILL NO.	NOTES
1-A 13.2	HB 29	John Tubbs, DNRC, re: status of Fis. Note, allow continuance of loans for water development-by market rate loans available. Rep Ewer this is a general obligation bond-an Rep. Mood-Program coord. with doubling irrigated acres. Beck-2/3 vote was needed to appropriate it-no cost to state. Coal tax back bonds.
1-A 22.8-36.1	95	Jack Shults-bill covers how DNRC covers water rights statute.-doesn't alter existing policy. John Metropolis-113,000 acres in their area served by irrigation project.-individuals can hold non-Indian or Indian reserved water rights or portions Opponent view by George Heavy Runner
1-A 51.7	"	MacIntyre-an issued raised by Salish-Kootenai Tribes. Don't want the State issuing permits re: fed. reserved rights when tribes are objectors.
1-A 55.5-58.5	"	Rep Mood asked for clarification: MacIntyre-Heavy Runner replied. Rep Younkin re definition of "appropriate" re: downstream permit applicant.
1-B 1.6	"	Rep Stovall-why DNRC submitting amendment. Shults-goal to strengthen their standing + make issue clear for applicants. Rep. Eggers-federal pre-emption MacIntyre-a recognition in state law-so an applicant has to take that into acct. when seeking a permit or a change
1-B 8.8	"	Rep. Eggers

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN WILLIAM CRISMORE**, on March 3, 1999 at 3:00 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:
Sen. William Crismore, Chairman (R)
Sen. Dale Mahlum, Vice Chairman (R)
Sen. Vicki Cocchiarella (D)
Sen. Mack Cole (R)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Bea McCarthy (D)
Sen. Ken Miller (R)
Sen. Glenn Roush (D)
Sen. Mike Taylor (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Larry Mitchell, Legislative Branch
Jyl Scheel, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 120, 3/03/1999; HB 95, 3/03/1999; HB 142, 3/03/1999
Executive Action: HB 95; HB 120

HEARING ON SB 120

Sponsor: SENATOR TOM KEATING, SD 5, BILLINGS presented the bill for REPRESENTATIVE ROY BROWN, HD 14, BILLINGS

Proponents:

Tom Richmond, Montana Board of Oil & Gas Conservation, Billings
Gail Abercrombie, Executive Director, Montana Petroleum Assoc.

Opponents: None.

Opening Statement by Sponsor:

SENATOR TOM KEATING, SD 5, BILLINGS, stated **HB 120** was for the purpose of allowing the Board of Oil and Gas to receive some administrative fees from the grants for the orphan well plugging program. The Board of Oil & Gas makes application for a grant to DNRC for Resource Indemnity Trust money. The law states that administrative fees for the project may not be used out of the grant money. The Board of Oil & Gas receives the grant dollars to do the plugging but has to administer the cost of the program from their own budget. This bill allows the use of 2.5% of the grant for the administration of the program.

Proponents' Testimony:

Tom Richmond, Montana Board of Oil & Gas Conservation, Billings, spoke in support of **HB 120** as per **EXHIBIT(nas48a01).** They were willing to subsidize these grant activities when they had a good cash flow. Due to the low price of oil they cannot afford to subsidize it anymore, this program needs to pay for itself.

Gail Abercrombie, Executive Director, Montana Petroleum Association, spoke in support of **HB 120.** She feels the cost of overseeing these projects by the Board of Oil & Gas should be funded through the grant.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SENATOR GROSFIELD asked if there were administrative fees for any agencies that were receiving these grants? **Bud Clinch, Director, Department of Natural Resources and Conservation,** stated currently there are no administrative fees being paid. The exception being, under the **RIT** program, there are administrative fees being paid to several agencies like **DEQ** and **DNRC** under existing authorizations. It is not necessarily the same as the grant in the bill, but there is a fair amount of precedent in using some of those monies for administrative purposes. **SEN. GROSFIELD** asked if administrative fees were not an acceptable part of a grant request? **Mr. Clinch** stated there are some grants

that, depending on the specific action being presented, may include some sort of oversight and administration. In some cases it may just be part of the ongoing expense by the agency that receives the grant and therefore not covered. There is not a real clear answer to the question. **SEN. GROSFIELD** stated **Mr. Mitchell** had pointed out on page 2 of the bill it specifically precludes the Board of Oil and Gas from receiving administrative costs. It does not indicate any other agency is restricted in this way.

SENATOR TAYLOR asked how the bill affected the **RIT** with sunsetting the trust? **SEN. KEATING** said if the bill does pass and the tax is sunset in 2001-2003, the flow of $300,000 per year of tax would stop going to the reclamation account, therefore, it does not affect the account other than it gets less money. The account still has a large portion of the interest income.

Closing by Sponsor:

SENATOR TOM KEATING, SD 5, BILLINGS, stated other government agencies do receive administrative costs by direct appropriation through their budgeting process. The statutes specifically prohibit that the grantees may not use administrative costs, this would be an exception to that statutory rule. He urged the committee's support.

EXECUTIVE ACTION ON HB 120

Motion/Vote: **SEN. GROSFIELD** moved that **HB 120 BE CONCURRED IN. Motion carried 9-0. SEN. KEATING** will carry bill to Senate floor.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 10.1; Comments : None.}

HEARING ON HB 95

Sponsor: **REPRESENTATIVE ROBERT STORY, HD 24, PARK CITY**

Proponents:

Bud Clinch, Director, Department of Natural Resources and Conservation
Holly Franz, Montana Power Company
John Bloomquist, Montana Stockgrowers Association
Lorna Karn, Montana Farm Bureau

Opponents: **None.**

Opening Statement by Sponsor:

REPRESENTATIVE ROBERT STORY, HD 24, PARK CITY, presented **HB 95** which is an update in the water law statute regarding permits and applications. Section 2 clarifies when a permit application is complete and the process. Section 3 deals with the objection process and who can be an objector. It clarifies when they have a valid objection. Section 4 removes the requirement that certified mail is sent to an applicant. Section 5 removes the requirement for an appropriator to give the department, at least, a 30 day notice if he wishes to extend the time to complete a project.

Proponents' Testimony:

Bud Clinch, Director, Department of Natural Resources and Conservation, spoke in support of **HB 95** as per **EXHIBIT(nas48a02).**

Holly Franz, Montana Power Company, spoke in support of **HB 95.** She proposed an amendment as per **EXHIBIT(nas48a03).** There are changes on page 8 and 9 that clarify the ability to correct defects in an application. It says if the application is not complete, the Department can return it to the applicant with certain time limits in which to correct that application. The bill, on page 9, says a complete and correct objection also has to be filed. If the objection is incomplete, it is invalid. There is no similar information or language clarifying the Department can take a look at an objection and rule it incomplete and then give the objector an opportunity to make corrections. The language in the amendment clarifies the Department can notify the objector of any defect and that objector then has 15 days to correct the objection.

John Bloomquist, Montana Stockgrowers Association, stated the idea of establishing some timelines was a good idea on the application and the objection process. He agreed with **Ms. Franz'** amendment.

Lorna Karn, Montana Farm Bureau, spoke in support of the bill for reasons given by the previous proponents.

Opponents' Testimony: **None.**

Questions from Committee Members and Responses: **None.**

Closing by Sponsor:

REPRESENTATIVE ROBERT STORY, HD 24, PARK CITY, stated he closed.

EXECUTIVE ACTION ON HB 95

Motion: SEN. KEATING moved that **HB 95 BE CONCURRED IN.**

Motion/Vote: SEN. MCCARTHY moved that **HB 95 AMENDMENTS BE ADOPTED. Motion carried 8-0.**

Motion/Vote: SEN. KEATING moved that **HB 95 BE CONCURRED IN AS AMENDED. Motion carried 8-0. SEN. GROSFIELD** will carry bill on Senate floor.

{Tape : 1; Side : A; Approx. Time Counter : 10.1 - 20.3; Comments : None.}

HEARING ON HB 142

Sponsor: REPRESENTATIVE SHIELL ANDERSON, HD 25, LIVINGSTON

Proponents:

Bud Clinch, Director, Department of Natural Resources and Conservation
John Bloomquist, Montana Stockgrowers Association
Don Allen, Western Environmental Trade Association
Lorna Karn, Montana Farm Bureau
Cary Hegreberg, Montana Wood Products Association
Patrick Heffernan, Montana Logging Association
Gail Abercrombie, Executive Director, Montana Petroleum Assoc.

Opponents:

Ira Holt, Ravalli County Fish & Wildlife Association
Tony Schoonen, State Lands Coalition and Skyline Sportsmen Assoc.
George Darrow, Oil Geologist, Former State Senator and Landowner in the Flathead
Harley Harris, Assistant Attorney General representing Attorney General Joe Mazurek as member of the State Board of Land Commissioners,
Rusty Harper, Representing State Auditor Mark O'Keefe as member of the State Board of Land Commissioners

Joe Kerwin, Deputy Secretary of State representing Secretary of State Mike Cooney as member of the State Board of Land Commissioners
Joe Lamson, Representing Nancy Keenan, Office of Public Instruction
Beth Cading, Bozeman
Julia Page, Northern Plains Resource Council
Tary Mockabee, Friends of the Wild Swan
Richard Parks, President of Bear Creek Council
Van Jamison, Montana Wildlife Federation
Bill Holdorf, Skyline Sportsman Association
Betty Waddell, Montana Association of Churches
Anne Hedges, Montana Environmental Information Center
Janet Ellis, Montana Audubon Society
Lorey Thomas, Anaconda Sportsman Club
Denise Roth Barber, Montana Sierra Club

Opening Statement by Sponsor:

REPRESENTATIVE SHIELL ANDERSON, HD 25, LIVINGSTON, presented **HB 142** which basically clarifies what is required of agencies in the Department of State Lands. It is brought about in the wake of a case where the court said "when there is a substantial question as to whether the change of use may have a significant effect upon the human environment, an **Environmental Impact Statement** would be required." That leaves a very confusing message and not much guidance as to when an **EIS** would be required on such things as lease renewals for state lands. It was also pointed out by **Justice Gray** in that same decision that **EIS** decisions are generally required under the administrative rules of Montana "for major state actions significantly affecting the quality of the human environment".

He presented an overview of the House Amendment added in Section 1 (3)(B) which says the administrative agency has the opportunity to have all the evidence that is significant in making its decision. This would not allow the agency to be blind sided by waiting until their review was done and then come into the District Court level with new evidence that would make the agency look like they had done an inadequate job. This gives them the opportunity to have all the evidence to put into the equation. The New Section 2 basically says if you simply have a lease renewal or transfer of lease, the terms of the lease do not change nor do the conditions. That is not a new event that would trigger the **Montana Environmental Protection Act (MEPA).**

Proponents' Testimony:

Bud Clinch, Director, Department of Natural Resources and Conservation, stated **HB 142** is brought forth to help the Department better fulfill their responsibilities associated with managing 5.2 million acres of land and to fulfill their responsibilities to the beneficiaries of revenue generation. **House Bill 142** is an attempt to stem the tide of expansion of **MEPA.** He passed out **EXHIBIT(nas48a04)** and **EXHIBIT(nas48a05)** to illustrate his talk about litigation, expansion of **MEPA** and actions making their ability to carry out their traditional activities very difficult. He then went through the bill to explain the changes and additions. The Department is not trying to do a wholesale exemption of **MEPA.** He feels they have an incredible past performance with **MEPA** as evidenced by the amount of budget and FTE that has been dedicated to that in the past as well as recognition received from various entities as well. He encouraged the committee's support of the bill.

{Tape : 1; Side : A; Approx. Time Counter : 20.3 - 40; Comments : None}

John Bloomquist, Montana Stockgrowers Association, pointed out to the committee **MEPA** is a procedural law not a substantive law. **House Bill 142** codifies some of the principals particularly established in the Federal Court interpretation of the **National Environmental Protection Act (NEPA).** Case law under **NEPA** is generally influential in interpreting **MEPA. HB 142** is not going to gut **MEPA** nor is it going to prevent public input or prevent anyone from litigating a case under **MEPA.** He urged the committee's support.

Don Allen, Western Environmental Trade Association, spoke in support of the bill. The amendment, added in the House regarding evidence, is an important addition to the bill and clears up some misunderstandings that were raised in the House hearing. It is no one's intention to weaken the opportunity for people to participate in the **MEPA** process. The handout provided by **Mr. Clinch** regarding the number of law suits speak volumes about the need for this bill. He encouraged a DO PASS consideration.

Lorna Karn, Montana Farm Bureau, stated this legislation makes a lot of sense for the reasons outlined by the former proponents. She urged the committee's support.

Cary Hegreberg, Montana Wood Products Association, said **MEPA** has been described as a look before you leap statute. It is a procedural statute. **MEPA** was not designed to strangle economic

activity by forcing such exhaustive analysis that agencies and people just give up trying. He hopes the committee will ponder and inquire about the original intent of **MEPA** and whether this bill fosters or detracts from that original intent. He approved the House amendment regarding evidence. He encouraged the committee's support.

Patrick Heffernan, Montana Logging Association, spoke in support of the bill as per **EXHIBIT(nas48a06).**

Gail Abercrombie, Executive Director, Montana Petroleum Association, spoke in support of **HB 142** and the side boards it puts on these decisions which gives a more focused direction for the decisions the Department has to make. It makes it more streamlined, more efficient, and more clear.

Opponents' Testimony:

Ira Holt, Ravalli County Fish & Wildlife Association, spoke in opposition to **HB 142.** The cause of their lawsuit, Sheep v. Sheep, was inaction. In 1991, it came to the Association's attention a new landowner had moved into the southern part of the Bitterroot Valley taking ownership of a ranch that also had some grazing leases on State Land. Domestic sheep were brought onto the lease. Some members of the Association knew there was recent scientific evidence that if domestic sheep came into contact with wild Bighorn Sheep, the Bighorn Sheep died. In 1991, **Mr. Holt** wrote a letter to **Chuck Wright, Department of State Lands in Missoula,** stating their concern in this matter. **Mr. Wright** called him after receiving the letter and stated this could be a problem. He was to do some checking into the matter and call back but they never heard from him again. They started contact with the **DSL** office in Helena to try to reach some agreement on this situation. Over the next two years there was not much action and **DSL** finally said they were not required to do it but they would do an Environmental Assessment (EA). Based on that EA, a decision was to be made on what to do. The **DSL** Director, at that time, published his decision the day he left office. They were in contact with the new director for the next few months. This decision was not appealable and it became obvious it would not be reviewed. They determined their only course of action was to go to court. They went to court and lost in District Court and went on to the Supreme Court. They did present new evidence partially because some of these scientific studies were ongoing. They did not mean it to be new evidence to blind side the agency, they meant it as supporting evidence to support the view there was a problem.

The Supreme Court decision stated the **DSL** did error. Something happened on the ground that said there might be environmental impact and something should be done. Because the lessee was no longer grazing domestic sheep the **DSL** said again they did not want to do anything. The Association asked they write some rules so this same thing did not happen in the future. Finally, after seven years, some rules were adopted in 1998. In their opinion, this bill now says the Department wants to have the right not to do anything if they don't think they need to do something. The Association thinks a better way to clarify the Supreme Court decision, in their case, is to write the rules to say it does not make any difference if a decision has just been made or not, if something happens on the ground that is different than what has been happening for last 80 years, and there is evidence brought which says there is a problem, then **MEPA** is triggered and something should be done. He requested the bill be killed.

Tony Schoonen, State Lands Coalition and Skyline Sportsmen Association, spoke in opposition to the bill as per **EXHIBIT(nas48a07)** and **EXHIBIT(nas48a08).**

George Darrow, Oil Geologist, Former State Senator and Landowner in the Flathead, spoke in opposition to **HB 142** as per **EXHIBIT(nas48a09)** and **EXHIBIT(nas48a10).**

{Tape : 1; Side : B; Approx. Time Counter : 0 - 34; Comments : None.}

Harley Harris, Assistant Attorney General representing Attorney General Joe Mazurek as member of the State Board of Land Commissioners, spoke in opposition to the bill as per **EXHIBIT(nas48a11).**

Rusty Harper, Representing State Auditor Mark O'Keefe as member of the State Board of Land Commissioners, stated Mr. O'Keefe supports the Attorney General's amendments. If the committee adopted the amendments he would support the bill.

Joe Kerwin, Deputy Secretary of State representing Secretary of State Mike Cooney as member of the State Board of Land Commissioners, spoke in opposition to the bill stating Secretary Cooney has long tried to get the public involved. He believes this bill goes too far for many of the reasons stated by **Mr. Harris** previously. He does not think there has been a case that proves this bill is needed. **MEPA** works and continues to work.

Joe Lamson, Representing Superintendent Nancy Keenan, Office of Public Instruction, spoke in opposition to the bill. Sheep v.

Sheep was not a frivolous thing, it was a very substantive danger to the state Bighorn Sheep population which the State of Montana had put considerable resources into developing over the years. In their trust responsibilities, they not only have to look at being prudent land managers and how they manage their land, but how those actions affect the neighbors within that area.

Beth Cading, Bozeman, stated she had been a **National Environmental Protection Act** Planning Compliance Officer for six years for the National Park Service in Yellowstone. **MEPA,** like **NEPA,** provides statutory foundation for guidance in making decisions where environmental values are in conflict with other values. These acts are not designed to eliminate environmental damage from projects but instead they insure an agency decision maker takes environmental factors into account when evaluating the consequences of a project. **MEPA** and **NEPA** are the processes that allow the public to participate in agency decisions. **HB 142** is an over reaction. She also disagreed that, in some cases, state school trust lands should be exempt from environmental review. She urged the committee to kill this bill for the future of Montana.

Julia Page, Northern Plains Resource Council, spoke in opposition to the bill as per **EXHIBIT(nas48a12).**

Tary Mockabee, Friends of the Wild Swan, spoke in opposition to the bill and stated she had been involved in the past year on a state land timber sale in her neighborhood. Her community cared very much about what changes this sale would incur. They helped shape the outcome by working with DNRC. This was the democratic process at work. She would like to think public involvement is still welcomed and honored in America.

Richard Parks, President of Bear Creek Council, spoke in opposition of the bill as per **EXHIBIT(nas48a13).**

Van Jamison, Montana Wildlife Federation, spoke in opposition to **HB 142.** In all the time he has been involved in **MEPA** he has never seen citizens ambushing agencies be a problem. When agencies get into problems, it is invariably because they have ignored citizens. The lawsuits filed come from agencies that simply do not listen and do not respond. They then become unhappy when citizens take them to Court to try to make them do what they are supposed to do. He suggests Sections 1 and 3 of the bill are nothing more than a shield for state government employees against citizens with legitimate issues. He requested a DO NOT PASS recommendation from the committee unless it would be amended with the Attorney General's amendments.

Bill Holdorf, Skyline Sportsman Association, spoke in opposition to the bill. He referred to **Mr. Bloomquist's** testimony where he stated there was about five areas that would not be affected. If they are not being affected, the bill is not needed.

Betty Waddell, Montana Association of Churches, spoke in opposition to the bill as per **EXHIBIT(nas48a14).**

Anne Hedges, Montana Environmental Information Center, spoke in opposition to the bill and stated most of their concerns had already been addressed. She passed out a handout, **EXHIBIT(nas48a15),** which shows all the agencies that have to comply with **MEPA.** One agency out of eight is asking that you change **MEPA** for everyone. It also shows the cases **DNRC** has won and lost. The **MEPA** cases they have won they claim they won because the court has restricted evidence. Why don't citizens have the right to say the Department ignored them and bring in evidence which supports that.

Janet Ellis, Montana Audubon Society, spoke in opposition to the bill as per **EXHIBIT(nas48a16).**

Lorey Thomas, Anaconda Sportsman Club, stated he liked to be last to make a good impression on the committee. Do Not Pass **HB 142.**

Denise Roth Barber, Montana Sierra Club, spoke in opposition to **HB 142.** She stated in any sports activity, you would never have your best offense wait until the last quarter or inning and say because we have these great offensive moves, let's surprise the opposing team and play them at the end. What if you lost? She resents the implication that they wait in the bushes and surprise people at the end because they do not.

Questions from Committee Members and Responses:

SENATOR COCCHIARELLA questioned if **REP. ANDERSON** knew **George Darrow** and he indicated he did. She then stated he is the author of the **MEPA** act. The Environmental Quality Council gives a **George Darrow** award every year to someone who implements **MEPA.** The Darrow award was recently given to the Forestry Division of DNRC. She asked if he had considered bringing this issue before **EQC** for study? **REP. ANDERSON** said this legislation was presented to him just prior to the session and he was not certain the **EQC** had met at that time. The legislation is sound in principle.

SENATOR COCCHIARELLA wondered if this bill had been brought before **EQC** for consideration? **Mr. Clinch** stated they responded to **EQC** in September with a list of all the Department's

legislation that was prepared. He presented a 30 minute discussion at the December meeting regarding this bill. **SEN. COCCHIARELLA** stated they appreciated that. Would the Department and sponsor consider allowing **EQC** to address this topic through some resolution or statutory study that says **EQC** needs to look at this again? **Mr. Clinch** stated he would not be supportive or willing to withdraw this legislation with the understanding the **EQC** would do a study.

SENATOR GROSFIELD questioned if ag leases are five years? **Mr. Clinch** stated the standard ag and grazing leases are ten years and they review between 800-1100 of them annually.

SENATOR GROSFIELD asked if it was the intention that every lease renewal ought to go through **MEPA** review? **Mr. Jamison** said no, not unless something has changed in the interim and that something has the potential to create significant impacts. **SEN. GROSFIELD** asked what if something comes up in year four on a ten year lease? What is fair in that regard given there is a contract in place? **Mr. Jamison** said the agency would be bound to honor its contractual agreement unless honoring that agreement would cause them in some way to violate the law. **SEN. GROSFIELD** stated he presumed contracts had verbiage regarding compliance with the law. **Mr. Clinch** stated that was correct and all lessees are required to abide by all applicable laws.

SENATOR GROSFIELD asked if he was advocating a mid-term **MEPA** evaluation? **Mr. Jamison** stated he did not think there should be a mid-term evaluation. He thinks **MEPA** takes a look at actions of state government and once you have acted, then you honor your contractual obligation.

SENATOR GROSFIELD asked the same question of **Mr. Harris** for his interpretation. **Mr. Harris** stated he did not think it would be a breach of contract on the part of the Department if four or five years down the road they went to the lessee and said they had evidence that the method of grazing being used is causing some harm and under the multiple use mandate the practices need to be modified. The amendments are trying to address this situation. They also propose to put some very strict timelines in place. If a citizen thinks there is a problem, they would have had an obligation, under the amendments in the sheep case, to come forward with their concern in 30 days and file suit in 90 days otherwise the Department then knows it is in compliance and nothing happens.

{Tape : 2; Side : A; Approx. Time Counter : 0 - 42; Comments : None.}

SENATOR GROSFIELD stated under the terms of a lease, can the Department come in and comment? **Tom Butler, Trust Lands Attorney for DNRC,** stated the Sheep v. Sheep case changed the way **MEPA** was administered. Previously the Department believed **MEPA** was triggered by a state action. Prior to the Sheep v. Sheep case the Department tried to work with the lessee if there was a problem. If there was a violation of law, the only mechanism they could use would be lease cancellation. In the Sheep v. Sheep case there was no violation of law, there was no substantive statute that forced any action. The litigants in that case believed that no sheep grazing should occur on state land and in response brought their case to District Court.

This case has definitely changed the way the Department is doing business. Now they are subject to invalidating any lease in mid-term and essentially violating the lease contract between the Department and the lessee. People take these leases in good faith and 97% are fine people and do a good job out on the land. They can still cancel these people for substantive violations of the law but what is most troublesome to them is the concept of passive **MEPA** where the Department is not active in anyway. Through the Supreme Court decision **MEPA** has been transformed into reviewing the actions of third parties under previously authorized contracts.

SENATOR TAYLOR questioned if the bill was challenged in its present state, what would the challenge be? Is the bill Constitutional? **Mr. Harris** stated this was a hard question to answer. There is a school of thought out there that says any action by the legislature that might erode on the ability of the public and people to protect that would be a challenge vote.

SEN. TAYLOR asked if he had reviewed the Attorney General's amendments? **Mr. Clinch** stated yes and that he disagreed with them. **SEN. TAYLOR** said if this bill were to pass, would it reduce the cost of doing business? **Mr. Clinch** stated if the bill were to pass certainly the cost associated with litigation would be reduced.

SENATOR GROSFIELD stated did the legislature, at the time of adoption, think **MEPA** would end up being such a significant portion of state natural resource agencies with 27% of the FTE's in the lands department being devoted just to **MEPA** compliance? **Mr. Darrow** stated he did not have any knowledge of current state budget or DNRC or DEQ budgets. He would observe that the **MEPA** process is sometimes elaborated on to the extent that **MEPA,** instead of being a straight forward effort to understand and define the consequences of an environmental action becomes a programmatic ritual of filling in the blanks of developing

appendices and data of an item. From a public viewpoint, this sometimes ends up doing more to obscure the impact statement than it does to explain and clarify them. He is surprised that the number is that high.

SENATOR GROSFIELD stated in some of cases, **MEPA** seems to border on being used substantively, especially in the situation where new information is being brought in after the fact. Do you see that as a problem? **Mr. Darrow** stated **MEPA** is basically a requirement that state agency people make a best efforts attempt to determine the truth and outline the consequences of their actions. Over the years it has become a ritual of filling in the blanks which requires a lot of manpower. The real thought applied to achieving the purposes of **MEPA** sometimes don't seem to come to the top.

SENATOR CRISMORE questioned how much money had been tied up in the timber sale on the Swan and why was it in litigation the last time? **Mr. Clinch** said he was not sure he could give an accurate dollar amount on the Mid-Soup Timber Sale. Litigation started in 1993. In 1994 they withdrew the timber sale and agreed they would go forth and do an EIS. Over the course of two years they redrafted the complete timber sale and included several mitigations brought forth by the plaintiffs. They took that through the public process and ultimately to the Land Board where they offered approval. The timber sale was offered again and they were litigated a second time by the same plaintiffs. This time in Court, the Plaintiffs brought up some of the same issues with new evidence that the Department had not totally mitigated all their concerns. A new issue brought up this time was, this sale now had been reduced in volume so much and such an exorbitant about of money had been spent doing the analysis, it was now a "below cost sale" which violated their trust mandate because they were not making any money on this sale. Currently the sale has been enjoined from further harvest. The time lines were about to expire when harvest began just before Christmas. Within about nine days the Court issued an injunction. The injunction hearing was held last week and the Judge refused the Department's request to remove the logs that have been harvested and which remain on site. The Judge further refused their request to implement an injunction bond. They have lost four times now on this sale. **SEN. CRISMORE** said everytime the Department had lost, they went back to Court and thought it was in place, with the agreement of the Land Board? **Mr. Clinch** stated each time they have gone back they have brought on a new, higher level of experts. Each time they ultimately had to take back the proposal to the Land Board. Like the Department, the Land Board believed an adequate analysis had been done and they had a defensible position.

SENATOR GROSFIELD stated it seems a bit much to go through lawsuit after lawsuit with the Land Board agreeing each time to finally get down to the argument that too much money has been spent because of all these lawsuits. That is not what **MEPA** is all about, that is not what environmental analysis is about and it certainly is not what good government is about. Do the Attorney General's amendments help with this situation? If not, what can be done to deal with this? **Mr. Harris** stated he did not have the intimate knowledge of this timber sale that the Director does. In general, it seems to be excessive. The argument raised in the fourth round about now so much time has been spent it is below cost seems to be a little far fetched. You can get into a situation where the Court says one thing and the Legislature does not like it, you either have to micro manage against every conceivable theory out there or at a certain point you have to trust the Court sooner or later to get it right. The Department is concerned that in some cases they have still not gotten it right and that is why they are here today. The amendments to the evidence portion, simply suggested they do what is done in any other administrative procedure act context and if there is new evidence send it back to the agency. The current bill, as amended in the House, does that.

Closing by Sponsor:

REPRESENTATIVE SHIELL ANDERSON, HD 25, LIVINGSTON, stated he did not feel the opponents had addressed the crux of what this bill does and instead used their standard anti-MEPA bill arguments. The bill was born with the Sheep v. Sheep case. The Department addressed the problem as it saw was adequate. There was some dispute between **Mr. Holt** and his group that it was not adequate so they went to Court. The question of whether or not what the Department did was adequate in that case was not addressed. To get to the point where the Court could say in their decision, they had to do an EIS, they took this meandering route through a number of very loosely related federal case law to get to the point. In their wake, they left a total lack of guidance to state agencies attempting to comply with the critically important **MEPA** and to State Courts attempting to insure such compliance. This bill is a reasonable approach in trying to clarify what the agency is responsible for under the terms of **MEPA**. There is nothing in the bill that precludes good judgement on doing an environmental assessment or environmental impact statement.

{Tape : 2; Side : B; Approx. Time Counter : 0 - 19; Comments : None.}

ADJOURNMENT

Adjournment: 5:40 P.M.

_____
SEN. WILLIAM CRISMORE, Chairman

_____
JYL SCHEEL, Secretary

WC/JS

EXHIBIT(nas48aad)

SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE 3-16-99
BILL NO. HB95

TESTIMONY BEFORE THE SENATE NATURAL RESOURCES COMMITTEE

HOUSE BILL NO. 95

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

MARCH 3, 1999

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MONTANA WATER USE LAWS; ~~CLARIFYING THAT TO APPROPRIATE WATER INCLUDES HOLDING A FEDERAL NON-INDIAN OR INDIAN RESERVED WATER RIGHT CREATED UNDER FEDERAL LAW;~~ CLARIFYING PROCEDURES FOR CORRECT AND COMPLETE PERMIT APPLICATIONS; CLARIFYING WHAT CONSTITUTES A VALID OBJECTION; CHANGING PROCEDURAL ASPECTS OF CERTAIN HEARINGS AND MAILINGS; ALTERING PROCEDURES FOR REQUESTING AN EXTENSION TO COMPLETE THE REQUIREMENTS FOR A WATER RIGHT PERMIT; AMENDING SECTIONS ~~85-2-102,~~ 85-2-302, 85-2-308, 85-2-309, 85-2-310, AND 85-2-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

Over the years, DNRC and water users have made changes to the Montana Water Use Act of 1973. This bill proposes minor changes to the law to help water users and the department use the Act more effectively and efficiently.

Section 1 of the bill clarifies 85-2-302 where it relates to a permit application which has defects. The statute allows 30 days for the application to be corrected and completed without losing the priority date issued at filing. Additionally, the department can allow up to 3 months from initial receipt of the defective application for correction and completion but after the first 30 days, the priority date is adjusted to the date that adequate information is received by the department so the application is no longer considered defective. If the application is not corrected within 3 months it is terminated. This "*clock begins ticking*" when the department *returns* a defective application. However, most applications are so voluminous, it is not reasonable to return the entire packet of material. This has never been convenient to the applicants or the department. Instead, this bill proposes a language change to allow the department to *contact* the applicant regarding deficiencies rather than return the application materials. This is a much more efficient way to handle this function.

Section 2 of the bill amends 85-2-308 to make it clearer on the criteria that have to be met before there is a valid objection to a permit or change application. The bill also identifies the objection deadline as the date that is included in the public notice. Both of these changes remove some ambiguity that has troubled people involved in the application process.

Section 3 and Section 4 of the bill amend 85-2-309 and 85-2-310 respectively to remove the requirement for the department to contact applicants by **certified** mail regarding hearings, extensions, and permit and authorization conditions. This change would allow the department to contact applicants by first class mail thus saving time and money. Certified mail adds unnecessary cost and burden to the process. Receiving first class mail is simpler for the water users since the mail can be delivered without requiring someone to be present to sign for the letter. Undelivered first class mail is returned to sender, thus, still providing the department with a means of tracking notices and addresses. Additionally, first class mail is a very dependable and efficient means of notifying water users. In all these actions, the department has had

telephone contact with the parties prior to the mailings in question here. This is a strong safeguard that makes certified mailings an unnecessary expense and inconvenience.

Finally, Section 5 of the bill amends 85-2-312 (3) to remove the requirement for an appropriator to give the department, at least, a 30-day notice that the appropriator wishes an extension of time to complete the project. In the past, the 30-day time frame was needed to give the department enough time to give pubic notice that an extension was requested for the project. Since the department realized there were virtually no valid objections to extension applications and that this notice added unnecessary cost and time to the process, it removed the notice requirement from its administrative rules. Therefore, there is no longer any need for the applicant to give the department a 30-day advance notice.

The department strongly encourages passage of this legislation as it clarifies a number of ambiguous terms and makes the water right permit process more efficient for the water user.

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 3-3-99
BILL NO. HB 95

Proposed Amendment to HB 95

1. Page 9, line 5.
Following: "application."
Insert: "The department shall notify the objector of any defects in an objection. An objection not corrected or completed within 15 days from the date of notification of the defects is terminated."

Prepared by Holly Franz
On behalf of the Montana Power Company
March 3, 1999

MONTANA SENATE
1999 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE March 3, 1999

NAME	PRESENT	ABSENT	EXCUSED
SEN. BILL CRISMORE, CHAIRMAN	X		
SEN. DALE MAHLUM, VICE CHAIRMAN	X		
SEN. VICKI COCCHIARELLA	X		
SEN. MACK COLE	X		
SEN. LORENTS GROSFIELD	X		
SEN. TOM KEATING	X		
SEN. BEA MC CARTHY	X		
SEN. KEN MILLER	X		
SEN. GLENN ROUSH	X		
SEN. MIKE TAYLOR	X		
SEN. BILL WILSON	X		

SENATE STANDING COMMITTEE REPORT

Mr. President:

We, your committee on **Natural Resources** report that **House Bill 95** (third reading copy -- blue) **be concurred in as amended**.

Signed: Wm S Crismore
Senator William Crismore, Chair

To be carried by Senator Lorents Grosfield

And, that such amendments read:

1. Page 9, line 5.
Following: "application."
Insert: "The department shall notify the objector of any defects in an objection. An objection not corrected or completed within 15 days from the date of notification of the defects is terminated."

- END -

Committee Vote:
Yes 8, No 0.

490928SC.sjo

SENATE STANDING COMMITTEE REPORT

March 4, 1999

Mr. President:

We, your committee on **Natural Resources** report that **House Bill 120** (third reading copy -- blue) **be concurred in**.

Signed: Wm L Crismore
Senator William Crismore, Chair

To be carried by Senator Tom Keating

- END -

Committee Vote:
Yes 9, No 0.

490926SC.sjo

DATE 2-3-99

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: HB 120, HB 95, HB 142

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Anne Hedges	443-2520	MEIC	142		X
Larry Morrell	676-5164	FOWS	142		X
Tommy Butler	444-3776	DNRC	HB 142	✓	
John Bloomquist	4-2211	Mt. Stockgrowers	HB142	✓	
Lorna Karn	442-9476	MT. FARM BUREAU	HB95 HB142	✓	
Richard Parks	848-7314	Beaverhead Council	HB 142		✓
Beth Kaeding	565-5644	self	HB142		X
Julie Page	848-7571	NPRC	142		X
Jim Sweaney	848-7602	self	142		X
Bill HOLDORF	494-6073	SKYLINE SPORTSMEN	142		X
Tony Schoonen	782-1566	Skyline & Stockgrowers	142		X
Charles Brooks	442-2405	Billings Chamber	95	✓	
Betty & Ralph Thatcher	626-5693	self	142		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 3-5-99

SENATE COMMITTEE ON NATURAL RESOURCES

BILLS BEING HEARD TODAY:

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
BETTY WADDELL	442-3525	MT ASSOC. OF CHURCHES	HB 142		X
Janet Ellis	443-3949	MT Audubon	HB142		✓
Tom RICHMOND	656-0040	MT BOARD of O.I & GAS	HB120	✓	
Gail Abercrombie	442-7582	MT Petroleum Assn	HB 142 HB120	✓ ✓	
Cary Hegreberg		Wood Products Assoc.	HB142	✓	
Joe LAMSON	4-7094	OPI	HB 142		X
Joe Kerwin	4-5376	Sec & Stat	HB 142		X
IRA HOLT	961 3302	RAVALLI COUNTY FISH & WILDLIFE ASSOC	HB142		X
Van Jamison	443-0815	Montana Wildlife Federation	HB142		X
Rusty Harper	4-2725	St. Auditor's Off.	HB142		X
George Darrow	406-587-4400	Self	HB142		X
Denise Ralph Barber	—	MT Sierra Club	HB142		X
Holly Franz	442-8560	MT Power Co.	HB 95	✓ w/amend	
Don Allen	443-5541	WETA	HB142	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

(3)

DATE 3-3-99

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY:

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Lee Arbuckle	442-4442	Mt. League of Women Voters	142		
PATRICK HOFFORNAN	752-3168	MLA	142	X	
AL KINGTON	458-5286	IFPA	142	X	
BUD CLINCH	444-2074	DNRC	142 95	X	

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LEGISLATIVE TAPE LOG

COMMITTEE: Natural Resources

DATE: March 3, 1999

	MINUTES	CONTENT NOTES
	0-10.1	Sponsor Opening - HB 120 Proponent Testimony Committee Questions and Sponsor Closing
	____	Executive Action - HB 120
	10.1-20.3	Sponsor Opening - HB 95 Proponent Testimony Committee Questions
	____	Sponsor Closing Executive Action - HB 95
	20.3-40	Sponsor Opening - HB 142 Proponent Testimony
SIDE B	0-34	Proponent Testimony Opponent Testimony
Tape 2	0-42	Opponent Testimony Committee Questions
SIDE B	0-19	Committee Questions Sponsor Closing - HB 142
	____	
	____	